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Revised statutes 1927

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THE
REVISED STATUTES

OF
ONTARIO, 1927,

BEING A

REVISION AND CONSOLIDATION OF THE REVISED STATUTES
OF ONTARIO, 1914, AND THE SUBSEQUENT PUBLIC
GENERAL ACTS

OF THE
LEGISLATURE OF ONTARIO

VOL. II.



ONTARIO

TORONTO:

PRINTED BY THE
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY.

1927

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ALPHABETICAL TABLE OF STATUTES.

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SECTION VIII.

LAW OF PROPERTY.

1. LAW OF PROPERTY IN GENERAL.

CHAPTER 130.

The Property and Civil Rights Act.

1.—(1) In all matters of controversy, relative to property and civil rights, resort shall be had to the laws of England as they stood on the 15th day of October, 1792, as the rule for the decision of the same; and all matters relative to testimony and legal proof in the investigation of fact and the forms thereof in the courts of Ontario shall be regulated by the rules of evidence established in England, as they existed on that day, except so far as such laws and rules have been since repealed, altered, varied, modified or affected by any Act of the Imperial Parliament, still having the force of law in Ontario, or by any Act of the late Province of Upper Canada, or of the Province of Canada, or of the Province of Ontario, still having the force of law in Ontario. Rule of decision.

(2) Nothing in this section shall extend to any of the laws of England respecting the maintenance of the poor. Saving. R.S.O. 1914, c. 101, s. 2.

CHAPTER 131.

The Statute of Frauds.

Writing
required to
create
certain
estates or
interests.

Effect if
not in
writing.

1.—(1) Every estate or interest of freehold and every uncertain interest of, in, to or out of any messuages, lands, tenements or hereditaments shall be made or created by writing signed by the parties making or creating the same, or their agents thereunto lawfully authorized in writing, and if not so made or created shall have the force and effect of an estate at will only, and shall not be deemed or taken to have any other or greater force or effect.

Leases to
be made
by deed.

(2) All leases and terms of years of any messuages, lands, tenements or hereditaments shall be void at law unless made by deed. R.S.O. 1914, c. 102, s. 2.

How leases
or estates
of freehold,
etc., to be
granted or
surrendered.
Rev. Stat.
c. 137.

2. Subject to section 8 of *The Conveyancing and Law of Property Act* no lease, estate or interest, either of freehold or term of years, or any uncertain interest of, in, to or out of any messuages, lands, tenements or hereditaments shall be assigned, granted or surrendered unless it be by deed or note in writing signed by the party so assigning, granting, or surrendering the same, or his agent thereunto lawfully authorized by writing or by act or operation of law. R.S.O. 1914, c. 102, s. 3.

Except
leases not
exceeding
three years,
etc.

3. Sections 1 and 2 shall not apply to a lease, or an agreement for a lease, not exceeding the term of three years from the making thereof, the rent upon which, reserved to the landlord during such term, amounts unto two-thirds at the least of the full improved value of the thing demised. R.S.O. 1914, c. 102, s. 4.

Writing
required
for certain
contracts.

4. No action shall be brought whereby to charge any executor or administrator upon any special promise to answer damages out of his own estate, or whereby to charge any person upon any special promise to answer for the debt, default or miscarriage of any other person, or to charge any person upon any agreement made upon consideration of marriage, or upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them, or upon any

agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some person thereunto by him lawfully authorized. R.S.O. 1914, c. 102, s. 5.

5. No special promise made by any person to answer for the debt, default or miscarriage of another person, being in writing and signed by the party to be charged therewith, or by some other person by him thereunto lawfully authorized, shall be deemed invalid to support an action or other proceeding to charge the person by whom the promise was made by reason only that the consideration for the promise does not appear in writing, or by necessary inference from a written document. R.S.O. 1914, c. 102, s. 6.

Consideration for promise to answer for another need not be in writing.

6. No action shall be maintained whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy or upon any ratification after full age of any promise or simple contract made during infancy, unless the promise or ratification is made by some writing signed by the party to be charged therewith or by his agent duly authorized to make the promise or ratification. R.S.O. 1914, c. 102, s. 7.

As to ratification of promise made during non-age.

7. No action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade or dealings of any other person, to the intent or purpose that such other person may obtain money, goods or credit thereupon, unless the representation or assurance is made in writing signed by the party to be charged therewith. R.S.O. 1914, c. 102, s. 8.

As to representation regarding the character, conduct, credit, etc., of a third party.

8. Subject to section 9 all declarations or creations of trusts or confidences of any lands, tenements or hereditaments shall be manifested and proved by some writing signed by the party who is by law enabled to declare such trust, or by his last will in writing, or else they shall be utterly void and of none effect. R.S.O. 1914, c. 102, s. 9.

Declarations or creations of trusts of land to be in writing signed.

9. Where any conveyance is made of any lands or tenements by which a trust or confidence shall or may arise or result by the implication or construction of law, or be transferred or extinguished by act or operation of law, then and in every such case such trust or confidence shall be of the like force and effect as the same would have been if this Act had not been passed. R.S.O. 1914, c. 102, s. 10.

Exception of trusts arising, transferred, or extinguished by implication of law.

Assign-
ments of
trusts shall
be in writ-
ing.

10. All grants and assignments of any trust or confidence shall likewise be in writing signed by the party granting or assigning the same, or by such last will or devise, or else shall likewise be utterly void and of none effect. R.S.O. 1914, c. 102, s. 11.

Writing re-
quired on
agreement
for pay-
ment of
commission.

11. No action shall be brought to charge any person for the payment of a commission or other remuneration for the sale, purchase, exchange, or leasing of real property unless the agreement upon which such action shall be brought shall be in writing separate from the sale agreement and signed by the party to be charged therewith or some person thereunto by him lawfully authorized. 1916, c. 24, s. 19, *part*; 1918, c. 20, s. 58.

[*Note.—As to contracts for the sale of goods, see Sale of Goods Act, Rev. Stat. c. 163.*]

As to mining lands, see Mining Act, Rev. Stat. c. 45, s. 73.

CHAPTER 132.

The Mortmain and Charitable Uses Act.

1.—(1) In this Act,

Interpreta-
tion.

(a) “Assurance” shall include a gift, conveyance, ap-
pointment, lease, transfer, settlement, mortgage,
charge, incumbrance, devise, bequest and every
other assurance by deed, will or other instrument;
and “Assure” and “Assuror” shall have meanings
corresponding with assurance;

“Assurance.”

(b) “Will” shall include codicil;

“Will.”

(c) “Land” shall include tenements and hereditaments
corporeal and incorporeal of whatever tenure, but
not money secured on land, or other personal estate
arising from or connected with land;

“Land.”

(d) “Full and valuable consideration” shall include
such a consideration either actually paid upon or
before the making of the assurance, or reserved
or made payable to the vendor or any other person
by way of rent, rent charge, or other annual pay-
ment, in perpetuity, or for any term of years, or
other period, with or without a right of re-entry
for non-payment thereof, or partly paid and partly
reserved, as aforesaid.

“Full and
valuable con-
sideration.”
Imp. Acts 51
52 Vict. c. 42,
s. 10; and 54-
55 Vict. c. 73,
s. 3.

(2) The following shall be deemed to be charitable uses
within the meaning of this Act,—

Charitable
uses.
Imp. Act,
43 Eliz. c. 4,
s. 1.

(a) The relief of poverty;

(b) Education;

(c) The advancement of religion; and

(d) Any purpose beneficial to the community, not fall-
ing under the foregoing heads. R.S.O. 1914,
c. 103, s. 2.

PART I.

MORTMAIN.

General prohibition against mortmain.

2. Land shall not be assured to or for the benefit of, or acquired by or on behalf of any corporation in mortmain, otherwise than under the authority of a license from His Majesty, or of a statute for the time being in force, and if any land is so assured, otherwise than as aforesaid, the land shall be forfeited to His Majesty from the date of the assurance, and His Majesty may enter on and hold the land accordingly. R.S.O. 1914, c. 103, s. 3.

Forfeiture. Imp. Act. 51-52 Vict. c. 42, s. 1

Power to grant licenses in mortmain.

3. The Lieutenant-Governor in Council, if and when, and in such form as he thinks fit, may grant to any person or corporation a license to assure land in mortmain in perpetuity or otherwise, and may grant to any corporation a license to acquire land in mortmain, and to hold such land in perpetuity or otherwise. R.S.O. 1914, c. 103, s. 4.

Imp. Act 51-52 Vict. c. 42, s. 2.

Saving for rents and services.

4. No entry or holding by, or forfeiture to His Majesty, under this Part, shall merge or extinguish or otherwise affect any rent or service which may be due in respect of any land to His Majesty. R.S.O. 1914, c. 103, s. 5.

Imp. Act 51-52 Vict. c. 42, s. 3.

Regulations by Order-in-Council.

5.—(1) The Lieutenant-Governor in Council may make regulations respecting,—

Evidence upon application.

(a) the evidence required, upon the application for a license in mortmain, as to the creation of the corporation, its powers and objects and its existence as a valid and subsisting corporation;

Service of process.

(b) the appointment and continuance by the corporation of a person or corporation as its representative in Ontario on whom service of process, notices or other proceedings may be made, and the powers to be conferred on such representative;

Forms, duration, etc

(c) the forms, duration and extent of licenses, and the forms of powers of attorney, applications, notices, statements, returns and other documents relating to applications and other proceedings under this Act.

Orders as to particular cases.

(2) The Lieutenant-Governor in Council may make orders as to particular cases where the general regulations may not be applicable or where they would cause unnecessary inconvenience or delay.

Proof to be furnished on application.

(3) Upon the application for a license in mortmain the applicant shall establish to the satisfaction of the Minister, or such other officer as may be charged by him to report there-

on, that the provisions of this Act and the regulations have been complied with; and the Minister, Deputy Minister or such other officer may, for that or for any other purpose under this Act, take evidence under oath.

(4) There shall be paid to His Majesty for the public use ^{Fees.} of Ontario for every license such fees as may be prescribed by the Lieutenant-Governor in Council. 1921, c. 46, s. 2, *part*.

PART II.

CHARITABLE USES.

6. Save as herein otherwise provided, every assurance, other than by will, of land or personal estate to be laid out in the purchase of land to or for the benefit of any charitable use shall be void unless made ^{Conditions under which assurances may be made to charitable uses.}

- (a) to take effect in immediate possession for such charitable use;
- (b) without any power of revocation, reservation, condition or provision for the benefit of the assurator or of any person claiming under him; and
- (c) at least six months before the death of the assurator, and if of stock in the public funds by transfer thereof in the public books kept for the transfer of stock at least six months before such death;

Provided that the assurance or any instrument forming ^{Proviso.} part of the same transaction may contain all or any of the following conditions, so however that they reserve the same benefits to persons claiming under the assurator as to the assurator himself, namely;

- (i) the grant or reservation of a peppercorn or other nominal rent;
 - (ii) the grant or reservation of mines or minerals;
 - (iii) the grant or reservation of any easement;
 - (iv) covenants or provisions as to the erection, repair, position, or description of buildings, the formation or repair of streets or roads, or as to drainage or nuisances, and covenants or provisions of the like nature for the use and enjoyment as well of the land comprised in the assurance as of any other adjacent or neighbouring land;
 - (v) a right of entry on non-payment of any such rent or on breach of any such covenant or provision;
- or

- (vi) any stipulations of the like nature for the benefit of the assesor or of any person claiming under him; and

Proviso.

Provided that nothing in this section contained shall apply to or affect any such assurance made for full and valuable consideration. R.S.O. 1914, c. 103, s. 6.

Necessity
for sale.

7.—(1) Subject to the provisions hereinafter contained where land is assured otherwise than by will to or for the benefit of any charitable use the same shall notwithstanding anything contained in the deed or other instrument of assurance be sold within two years from the date of the assurance or within such extended period as may be determined by a judge of the Supreme Court. R.S.O. 1914, c. 103, s. 7 (1), *part*.

Idem.

(2) If the land is not sold within the two years or within such extended period it shall vest forthwith in the Public Trustee and subsection 2 of section 10 shall apply thereto. R.S.O. 1914, c. 103, s. 7 (2); 1927, c. 28, s. 7 (1).

When
sanctioned.

(3) A judge of the Supreme Court, if satisfied that the land so assured is required for actual occupation for the purposes of the charity and not as an investment, may by order sanction the retention of such land. R.S.O. 1914, c. 103, s. 7 (3), *part*.

PART III.

EXEMPTIONS.

Definitions.

8.—(1) In this section,

"Public
park."

- (a) "Public park" shall include any park, garden, or other land dedicated or to be dedicated to the recreation of the public;

"School."

- (b) "School" shall mean a school, or department of a school, at which education is given in literature, art, science or mathematics, or a vocational or technical school;

"School
house."

- (c) "School house" shall include the teacher's dwelling house, the playground, if any, and the offices and premises belonging to or required for a school;

"Public
museum."

- (d) "Public museum" shall include buildings used, or to be used, for the preservation of a collection of paintings or other works of art, or of objects of natural history, or of mechanical, scientific or philosophical inventions, instruments, models or designs, and dedicated or to be dedicated to the recreation of the public, together with any libraries, reading rooms, laboratories and other offices

and premises used or to be used in connection therewith. R.S.O. 1914, c. 103, s. 8 (1); 1927, c. 28, s. 7 (2).

(2) Notwithstanding anything in this Act, land or personal estate to be laid out in the purchase of land, may be assured for the following purposes, Assurances for a public park, school, or museum.

- (a) for a public park;
- (b) for a public museum;
- (c) for a public library;
- (d) for a school or school house.

(3) Land assured for the purposes of a school or school house and not required for actual use and occupation for such purposes or the part thereof not so required shall be sold within two years from the date of the assurance or, in the case of a will, from the death of the testator, or such extended period as may be determined by a judge of the Supreme Court, and the provisions of subsection 2 of section 10 and of section 12 shall apply. R.S.O. 1914, c. 103, s. 8 (2, 3). Sale of land assured for school if not required for actual use.

9. Sections 2 and 6 shall not apply to the following assurances,— Assurances for certain universities, colleges.

- (a) an assurance of land or personal estate to be laid out in the purchase of land, to or in trust for any incorporated university, college or school in Ontario, or for the support and maintenance of the students thereat;
- (b) an assurance, otherwise than by will, to trustees on behalf of any society or body of persons, incorporated or unincorporated, associated together for religious purposes, or for the promotion of education, art, literature, science or other like purposes, of land not exceeding two acres, for the erection thereon of a building for such purposes, or any of them, or whereon a building used or intended to be used for such purposes, or any of them, has been erected. R.S.O. 1914, c. 103, s. 9. Imp. Act, 51-52 V. c. 42, s. 7.

PART IV.

LAND DEVISED BY WILL.

10.—(1) Land may be devised by will to or for the benefit of any charitable use, but, except in the cases provided for by sections 8 and 9 and except as herein otherwise provided, shall, notwithstanding anything in the will contained to the contrary, be sold within two years from the death of the testator, or such extended period as may be determined by a judge of the Supreme Court. R.S.O. 1914, c. 103, s. 10 (1). Power to devise land for charitable use. Necessity for sale.

Where land remains unsold after expiration of two years.

(2) So soon as the two years or such extended period shall have expired without the completion of the sale of the land, the land shall vest forthwith in the Public Trustee who shall cause the same to be sold, with all reasonable speed and after payment of the costs and expenses incurred in or connected with such sale and proceedings shall pay the proceeds to the trustees for the charity. 1927, c. 28, s. 7 (3).

Personal estate directed to be laid out in land.

11. Any personal estate by will directed to be laid out in the purchase of land to or for the benefit of any charitable use, shall, except as hereinafter provided, be held to or for the benefit of the charitable use as though there had been no direction to lay it out in the purchase of land. R.S.O. 1914, c. 103, s. 11.

Power to retain land in certain cases.

12. A judge of the Supreme Court, if satisfied that land devised by will to or for the benefit of any charitable use, or proposed to be purchased out of personal estate by will directed to be laid out in the purchase of land, is required for actual occupation for the purposes of the charity, and not as an investment, may, by order, sanction the retention or acquisition, as the case may be, of such land. R.S.O. 1914, c. 103, s. 12, *part*.

PART V.

GIFTS AND BEQUESTS TO CERTAIN PUBLIC BODIES.

Power of certain public bodies to accept gifts to charitable uses.

13.—(1) The Government of Ontario, a municipal corporation, a school board, a public library board or association, a public hospital board and trustees empowered to administer or hold property for charitable uses may have, take, hold and enjoy by gift, grant, devise, conveyance or bequest real or personal property of any nature or kind and wherever situate, whether within or without Ontario, or the proceeds thereof upon the terms expressed in the gift, grant, devise, bequest or conveyance whereby the same is given, granted, devised, bequeathed or conveyed to such body. R.S.O. 1914, c. 103, s. 14 (1).

Agreement with donor as to administration.

(2) Any such body may, subject always to the provisions of the Act by or under the authority of which it exists and to any law regulating or limiting its power to contract debts, enter into an agreement for the holding, management, administration or disposition of any such property with the person giving, granting, conveying, devising or bequeathing the same to such public body upon such terms as may be agreed upon between the parties to any such gift, grant, devise, bequest or conveyance. R.S.O. 1914, c. 103, s. 14 (2); 1914, c. 2, Sched. (22).

(3) Land so given, granted, devised, bequeathed or conveyed and not required for actual use and occupation for the purposes of the trust upon which it was given, granted, devised, conveyed or assured to such public body shall be sold within two years from the date of the gift, grant, devise, conveyance or assurance or, in the case of a will, from the death of the testator, or such extended period as may be determined by a judge of the Supreme Court, and the provisions of subsection 2 of section 10 and of section 12 shall apply. Necessity for sale within two years. R.S.O. 1914, c. 103, s. 14 (3), *part*.

(4) This section shall apply to gifts, grants, devises, bequests and conveyances heretofore made as well as to such as may hereafter be made. Retroactive effect of section R.S.O. 1914, c. 103, s. 14 (4).

PART VI.

SUPPLEMENTAL.

14.—(1) In every case of a breach or supposed breach of any trust created for charitable purposes, or whenever the direction or order of a court shall be deemed necessary for the administration of any trust for charitable purposes, any two or more persons may present a petition to the Supreme Court stating such complaint and praying such relief as the nature of the case may require, and the Court may hear such petition in a summary way, and upon such affidavits, or such other evidence as shall be produced upon such hearing, may determine the same, and make such order therein, and with respect to the costs of such application, as shall seem just; and any order so made shall be subject to appeal as if made in an action. Procedure in cases of breach of a charitable trust, etc., or where order necessary for administration.

(2) Every such petition shall be signed by the persons preferring the same in the presence of and shall be attested by their solicitor, and shall be submitted to and may be allowed by the Attorney-General, and such allowance shall be certified by him before any such petition shall be presented. Execution of petition and certificate by Attorney-General. Imp. 52 Geo. 3. c. 101, s. 1. R.S.O. 1914, c. 103, s. 15.

15. Nothing in this Act shall apply so as to limit or restrict the right possessed by any corporation under any other Act, or affect any charter or license in force at the passing of this Act enabling land to be assured or held in mortmain. Saving for existing licenses, etc. R.S.O. 1914, c. 103, s. 16.

CHAPTER 133.

The Escheats Act.

Proceedings
by, for
recovery of
escheated or
forfeited
lands.

1.—(1) Where land has escheated to the Crown by reason of the person last seised thereof or entitled thereto having died intestate and without lawful heirs, or has become forfeited for any cause to the Crown, the Public Trustee may cause possession thereof to be taken in the name of the Crown; or if possession is withheld may cause an action to be brought for the recovery thereof, without an inquisition being first made. R.S.O. 1914, c. 104, s. 2 (1); 1919, c. 32, s. 3.

Practice.

(2) The proceedings in the action may be in all respects similar to those in other actions for the recovery of land. R.S.O. 1914, c. 104, s. 2 (2).

Grant of
escheated or
forfeited land
in recognition
of moral
claim.

2. The Lieutenant-Governor in Council may grant any land which has heretofore so escheated or becomes so forfeited or which hereafter so escheats or becomes so forfeited, or any part thereof, or any interest therein, to any person for the purpose of transferring or restoring the same to any person having a legal or moral claim upon the person to whom the same had belonged, or of carrying into effect any disposition thereof which such person may have contemplated, or of rewarding any person making discovery of the escheat or forfeiture, as to the Lieutenant-Governor in Council may seem meet. R.S.O. 1914, c. 104, s. 3.

Or of
deceased's
intention.

Or reward to
informant.

Rights of
grantee.

3. Any such grant may be made without actual entry or inquisition being first made; and, if possession of the land is withheld, the person to whom the grant is made may institute, in any court of competent jurisdiction, proceedings for the recovery thereof. R.S.O. 1914, c. 104, s. 4.

Release or
waiver of
forfeiture.

4. Where any such forfeiture takes place the Lieutenant-Governor in Council may waive or release any right to which the Crown may thereby have become entitled, so as to vest the land, either absolutely or otherwise, in the person who would have been entitled thereto but for the forfeiture; and the waiver or release may be either for valuable consideration or otherwise, and may be upon such terms and conditions as to the Lieutenant-Governor in Council may seem meet. R.S.O. 1914, c. 104, s. 5.

5. The Lieutenant-Governor in Council may grant any personal property to which the Crown is entitled by reason of the person last entitled thereto having died intestate and without leaving any kin or other person entitled to succeed thereto, or by reason of the same having become forfeited for any cause to the Crown or may grant any part of such personal property for any of the purposes mentioned in section 2. R.S.O. 1914, c. 104, s. 6.

Similar powers as to personalty to which the Crown has become entitled.

CHAPTER 134.

The Fraudulent Conveyances Act.

INTERPRETATION.

1. In this Act,

"Convey-
ance."

(a) "Conveyance" shall include gift, grant, alienation, bargain, charge, incumbrance, limitation of use or uses of, in, to or out of real property or personal property by writing or otherwise.

"Personal
property."

(b) "Personal Property" shall include goods, chattels, effects, bills, bonds, notes and securities, and shares, dividends, premiums and bonuses in any bank, company or corporation, and any interest therein.

"Real
property."

(c) "Real Property" shall include lands, tenements, hereditaments, and any estate or interest therein.
R.S.O. 1914, c. 105, s. 2.

CONVEYANCES IN FRAUD OF CREDITORS.

When
conveyances
declared
void as
against
creditors.
13 Eliz.,
c. 5, s. 1.

2. Every conveyance of real property or personal property and every bond, suit, judgment and execution at any time had or made or at any time hereafter to be had or made with intent to defeat, hinder, delay or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures shall be null and void as against such persons and their assigns. R.S.O. 1914, c. 105, s. 3.

Saving as to
conveyances
by tenants
in tail.
13 Eliz.,
c. 5, s. 3.

3. Where a conveyance made by a tenant in tail is impeached under section 2, it shall nevertheless be as valid as against the heirs in tail and all persons entitled in reversion or remainder as if this Act had not been passed. R.S.O. 1914, c. 105, s. 4.

Saving as to
conveyances
made *bona
fide* and for
good con-
sideration.
13 Eliz.,
c. 5, s. 5.

4. Section 2 shall not extend to any estate or interest in real property or personal property conveyed upon good consideration and *bona fide* to any person not having at the time of the conveyance to him notice or knowledge of such intent. R.S.O. 1914, c. 105, s. 5.

How far
valuable
consideration
and intent to
pass interest
to avail.

5. Section 2 shall apply to all conveyances executed with the intent in that section set forth notwithstanding that the same may be executed upon a valuable consideration and with the intention, as between the parties to the same, of

actually transferring to and for the benefit of the transferee the interest expressed to be thereby transferred, unless the same is protected under section 4 by reason of *bona fides* and want of notice or knowledge on the part of the purchaser. R.S.O. 1914, c. 105, s. 6 (1).

CONVEYANCES IN FRAUD OF PURCHASERS.

6. Every conveyance of real property had or made or at any time hereafter to be had or made with intent to defraud and deceive such person as may have purchased or shall afterwards purchase such real property shall be deemed only as against that person and his assigns, and all persons lawfully claiming under him, or them, who have purchased or shall hereafter purchase for money or other good consideration the same real property or any part thereof to be null and void. R.S.O. 1914, c. 105, s. 7.

When fraudulent conveyances declared void as against purchasers. 27 Eliz., c. 4, s. 1.

7. Section 6 shall not extend to or be construed to impeach, defeat, make null or void any conveyance of real property made upon or for good consideration and *bona fide*. R.S.O. 1914, c. 105, s. 8.

Saving as to conveyances made on good consideration. 27 Eliz., c. 4, s. 3.

8.—(1) If any person makes a conveyance of real property with any clause, provision, article, or condition of revocation, determination or alteration at his will or pleasure, and after such conveyance bargains, sells, demises, grants, conveys or charges the same or any part thereof to any person for money or other good consideration paid or given, such first conveyance not being by him revoked, made void, or altered according to the power and authority so reserved or expressed therein, then such first conveyance as touching the real property so after bargained, sold, conveyed, demised or charged against the bargainees, vendees, lessees, grantees, their heirs, successors, and their assigns and against every person lawfully claiming under them, shall be null and void.

Conveyances made revocable of lands afterwards sold for good consideration to be void against the purchaser. 27 Eliz., c. 4, s. 4.

(2) No lawful mortgage made *bona fide*, and without fraud or covin, upon good consideration shall be impeached or impaired by force of this Act, but it shall have the like force and effect as if this Act had not been passed. R.S.O. 1914, c. 105, s. 9.

Saving as to mortgages.

ABSENCE OF VALUABLE CONSIDERATION.

9. Nothing in sections 6 to 8 shall extend to a conveyance which is executed in good faith and duly registered in the proper registry office or land titles office before the execution of the conveyance to, and before the creation of any binding contract for the conveyance to any subsequent purchaser from

Validity of voluntary conveyance, etc., executed in good faith and duly registered.

Mere absence
of valuable
consideration.

the same grantor of the same real property or any part thereof, nor shall the same merely by reason of the absence of a valuable consideration be null and void as against such purchaser or his heirs, executors, administrators or assigns or any person claiming by, from or under any of them. R.S.O. 1914, c. 105, s. 10.

Effect of
preceding
section.

10. Nothing in the next preceding section shall have the effect of making valid any instrument which is for any reason, other than or in addition to the absence of a valuable consideration, void under sections 6 to 8 or otherwise; nor have the effect of making valid any instrument as against a purchaser who had before the 28th day of February, 1868, entered into a binding contract for or received his conveyance upon such purchase. R.S.O. 1914, c. 105, s. 11.

CHAPTER 135.

The Powers of Attorney Act.

1. Where a power of attorney for the sale or management of real or personal estate, or for any other purpose, provides that the same may be exercised in the name and on the behalf of the heirs or devisees, executors or administrators of the person executing the same, or provides by any form of words that the same shall not be revoked by the death of the person executing the same, such provision shall be valid and effectual, subject to such conditions and restrictions, if any, as may be therein contained. R.S.O. 1914, c. 106, s. 2.

Express provision for exercise after decease of constituent.

2.—(1) Independently of such special provision in a power of attorney, every payment made and every act done under and in pursuance of a power of attorney, or a power, whether in writing or verbal, and whether expressly or impliedly given, or an agency expressly or impliedly created, after the death of the person who gave such power or created such agency, or after he has done some act to avoid the power or agency, shall, notwithstanding such death or act, be valid as respects every person who is a party to such payment or act, to whom the fact of the death, or of the doing of such act, was not known at the time of such payment or act *bona fide* made or done, and as respects all claiming under such last mentioned person.

Validity of acts or payments *bona fide* after decease or revocation.

(2) Nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made, and the person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the person making the payment. R.S.O. 1914, c. 106, s. 3.

Saving. Imp. Act, 56-57 Vict., c. 53, s. 24, part.

CHAPTER 136.

The Aliens' Real Property Act.

Aliens to have the same powers as to real estate as subjects of His Majesty.

1. On and from the 23rd day of November, 1849, every alien shall be deemed to have had and shall hereafter have the same capacity to take by gift, conveyance, descent, devise, or otherwise, and to hold, possess, enjoy, claim, recover, convey, devise, impart and transmit real estate in Ontario as a natural born or a naturalized subject of His Majesty. R.S.O. 1914, c. 108, s. 2.

Descent of real estate of aliens.

2. The real estate in Ontario of an alien dying intestate shall descend and be transmitted as if the same had been the real estate of a natural born or naturalized subject of His Majesty. R.S.O. 1914, c. 108, s. 3.

[NOTE.—*See Dominion Naturalization Act.*]

CHAPTER 137.

The Conveyancing and Law of Property Act.

1. In this Act,Interpreta-
tion.

- (a) "Conveyance" shall include assignment, appointment, lease, settlement, and other assurance, made by deed, on a sale, mortgage, demise, or settlement of any property or on any other dealing with or for any property; and "convey" shall have a meaning corresponding with that of conveyance; "Convey-
ance."
Imp. Act
44-45 V.
c. 41, s. 2.
"Convey."
- (b) "Land" shall include messuages, tenements, hereditaments, whether corporeal or incorporeal, and any undivided share in land; "Land."
- (c) "Mortgage" shall include any charge on property for securing money or money's worth; "Mortgage."
- (d) "Mortgage money" shall mean money or money's worth secured by a mortgage; "Mortgage
money."
- (e) "Mortgagee" shall include any person from time to time deriving title under the original mortgagee; "Mortgagee."
- (f) "Mortgagor" shall include any person from time to time deriving title under the original mortgagor or entitled to redeem a mortgage according to his estate, interest or right in the mortgaged property; "Mortgagor."
- (g) "Property" shall include real and personal property, and any debt, and any thing in action, and any other right or interest; "Property."
- (h) "Puffer" shall mean a person appointed to bid on the part of the seller; "Puffer."
- (i) "Purchaser" shall include a lessee, a mortgagee and an intending purchaser, lessee or mortgagee, or other person, who, for valuable consideration, takes or deals for any property; and "purchase" shall have a corresponding meaning with that of purchaser; but "sale" shall mean only a sale properly so called. R.S.O. 1914, c. 109, s. 2. "Purchaser."
"Purchase."
"Sale."

2. All corporeal tenements and hereditaments shall, as regards the conveyance of the immediate freehold thereof, lie in grant as well as in livery. R.S.O. 1914, c. 109, s. 3.

Form and
operation of
feoffments.

3. A feoffment, otherwise than by deed, shall be void and no feoffment shall have any tortious operation. R.S.O. 1914, c. 109, s. 4.

WORDS OF LIMITATION.

Words of
limitation.
Imp. Act,
44-45 V.
c. 41, s. 51.

4.—(1) In a conveyance it shall not be necessary, in the limitation of an estate in fee simple, to use the word heirs; or in the limitation of an estate in tail to use the words heirs of the body; or in the limitation of an estate in tail male or in tail female to use the words heirs male of the body or heirs female of the body.

Idem.

(2) For the purpose of such limitation it shall be sufficient in a conveyance to use the words in fee simple, in tail, in tail male, or in tail female, according to the limitation intended, or to use any other words sufficiently indicating the limitation intended.

Effect of
conveyance
without words
of limitation.
Imp. Act,
44 and 45 V.
c. 41, s. 63.

(3) Where no words of limitation are used the conveyance shall pass all the estate, right, title, interest, claim and demand, which the conveying parties have, in, to, or on the property conveyed, or expressed or intended so to be, or which they have power to convey in, to, or on the same.

Saving.

(4) Subsection 3 shall apply only if and as far as a contrary intention does not appear from the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained.

Operation
of section.

(5) This section shall apply only to conveyances made after the 1st day of July, 1886. R.S.O. 1914, c. 109, s. 5.

PROVISIONS AS TO CONVEYANCES.

Receipts.
Imp. Act,
44 and 45 V.
c. 41, s. 54.

5. A receipt for consideration money or securities in the body of a conveyance shall be a sufficient discharge to the person paying or delivering the same without any further receipt being endorsed on the conveyance. R.S.O. 1914, c. 109, s. 6.

Receipt as
evidence for
subsequent
purchaser.
Imp. Act,
44 and 45 V.
c. 41, s. 55.

6. A receipt for consideration money or other consideration in the body of a conveyance or indorsed thereon shall, in favour of a subsequent purchaser, not having notice that the money or other consideration thereby acknowledged to be received was not in fact paid or given, wholly or in part, be sufficient evidence of the payment or giving of the whole amount thereof. R.S.O. 1914, c. 109, s. 7.

Rights of
purchaser as
to execution.
Imp. Act,
44 and 45 V.
c. 41, s. 8.

7. On a sale the purchaser shall not be entitled to require that the conveyance to him be executed in his presence, or that of his solicitor, but shall be entitled to have, at his own

cost, the execution of the conveyance attested by some person appointed by him, who may, if he thinks fit, be his solicitor. R.S.O. 1914, c. 109, s. 8.

8. A partition and an exchange of land and an assignment of a chattel interest in land, and a surrender in writing of land not being an interest which might by law have been created without writing, shall be void at law, unless made by deed. R.S.O. 1914, c. 109, s. 9.

Requirement of deed for certain interests.

9. A contingent, an executory, and a future interest, and a possibility coupled with an interest in land, whether the object of the gift or limitation of such interest or possibility be or be not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent, into or upon land, may be disposed of by deed; but no such disposition shall, by force only of this Act, defeat or enlarge an estate tail. R.S.O. 1914, c. 109, s. 10.

Disposal of certain interests in land by deed. Saving.

10. An exchange or a partition of any tenements or hereditaments shall not imply any condition in law, and the word "give" or the word "grant" in a conveyance shall not imply any covenant in law, except so far as the word "give" or the word "grant" may, by force of any Act in force in Ontario, imply a covenant. R.S.O. 1914, c. 109, s. 11.

Exchange or partition. "Give" or "grant." Imp. Act, 8 and 9 V. c. 106, s. 4. part.

11. The next preceding three sections shall not extend to any deed, act or thing executed or done, or to any estate, right or interest created before the 1st day of January, 1850. R.S.O. 1914, c. 109, s. 12.

Application of preceding three sections.

12.—(1) Where by any letters patent, assurance or will, made and executed after the 1st day of July, 1834, land has been or is granted, conveyed or devised to two or more persons other than executors or trustees in fee simple, or for any less estate, it shall be considered that such persons took or take as tenants in common, and not as joint tenants, unless an intention sufficiently appears on the face of such letters patent, assurance or will, that they are to take as joint tenants.

Effect of grants, devises, etc., to two or more.

(2) This section shall apply notwithstanding that one of such persons is the wife of another of them. R.S.O. 1914, c. 109, s. 13.

Husband and wife.

13. Where hereafter two or more persons acquire land by length of possession they shall be considered to hold as tenants in common and not as joint tenants. R.S.O. 1914, c. 109, s. 14.

Land acquired by possession by two or more.

14.—(1) Every conveyance of land, unless an exception is specially made therein, shall include all houses, out-houses, edifices, barns, stables, yards, gardens, orchards, commons, trees, woods, underwoods, mounds, fences, hedges, ditches,

What to be included in conveyance.

ways, waters, water-courses, lights, liberties, privileges, easements, profits, commodities, emoluments, hereditaments and appurtenances whatsoever, to such land belonging or in any-wise appertaining, or with the same demised, held, used, occupied and enjoyed or taken or known as part or parcel thereof; and if the same purports to convey an estate in fee simple, also the reversion or reversions, remainder and remainders, yearly and other rents, issues and profits of the same land and of every part and parcel thereof, and all the estate, right, title, interest, inheritance, use, trust, property, profit, possession, claim and demand whatsoever, of the grantor, into, out of, or upon the same land, and every part and parcel thereof, with their and every of their appurtenances.

Application
of section.

(2) Except as to conveyances under former Acts relating to short forms of conveyances, this section shall apply only to conveyances made after the 1st day of July, 1886. R.S.O. 1914, c. 109, s. 15.

Meaning of
"mining
rights."

15. Unless the contrary appears to be the intent of the instrument, where in a conveyance the "mining rights" in respect of any land are granted or reserved, such grant or reservation shall be construed to convey or reserve the ores, mines and minerals on or under the land, together with such right of access for the purpose of winning such ores, mines and minerals as is incidental to a grant of ores, mines and minerals. R.S.O. 1914, c. 109, s. 16.

Meaning of
"surface
rights."

16. Unless the contrary appears to be the intent of the instrument, where in a conveyance the "surface rights" in respect of any land are granted or reserved, such grant or reservation shall be construed to convey or reserve the land therein described with the exception of the ores, mines and minerals on or under such land and such right of access for the purpose of winning the ores, mines and minerals as is incidental to a grant of ores, mines and minerals. R.S.O. 1914, c. 109, s. 17.

Application.

17. In any instrument purporting to deal with "mining rights" or "surface rights" these expressions shall respectively have the meaning affixed to them by the two next preceding sections. R.S.O. 1914, c. 109, s. 18.

Operation of
ss. 15 to 17.

18. The three next preceding sections shall have effect only as to conveyances or instruments executed on or after the 1st day of July, 1914, and shall not apply to conveyances by the Crown. R.S.O. 1914, c. 109, s. 19, *part*.

How
corporations
may convey.

19. Any corporation capable of taking and conveying land in Ontario shall be deemed to have been and to be capable of taking and conveying land by deed of bargain and sale, in like manner as any person in his natural capacity, subject to

any general limitations or restrictions and to any special provisions as to holding or conveying land which may be applicable to such corporation. R.S.O. 1914, c. 109, s. 20.

PROVIDING FOR INCUMBRANCES ON SALES.

20.—(1) Where land subject to an incumbrance, whether immediately payable or not, is sold by any court or out of court the court in which the sale takes place or the Supreme Court may, on the application of any party to the sale, direct or allow payment into court, in the case of an annual sum charged on the land, or of a capital sum charged on a determinable interest in the land, of such amount as, having regard to the interest which it will earn, the court considers will be sufficient by means of the income thereof to keep down or otherwise provide for that charge; and in any other case of capital money charged on the land, of an amount sufficient to meet the incumbrance and any interest due thereon; but in either case there shall also be paid into court such additional amount as the court considers will be sufficient to meet the contingency of further costs, expenses, and interest, and any other contingency, not exceeding one-tenth of the original amount to be paid in, unless the court for special reasons thinks fit to require a larger additional amount. R.S.O. 1914, c. 109, s. 21 (1), *part*.

Provision for sales free from incumbrances. Imp. Act, 44-45 V. c. 41, s. 5.

Payment into court.

(2) The court may thereupon, either after or without notice to the incumbrancer, declare the land to be freed from the incumbrance, and may make any order for conveyance, or vesting order, proper for giving effect to the sale: R.S.O. 1914, c. 109, s. 21 (2), *part*.

Conveyance or vesting order.

(3) After notice served on the persons interested in or entitled to the money or fund in court, the court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof. R.S.O. 1914, c. 109, s. 21 (3).

Directions.

(4) Payment of money into court shall effectually exonerate therefrom the person making the payment and shall free the land from the charge or incumbrance. R.S.O. 1914, c. 109, s. 21 (4), *part*.

Effect of payment into Court.

IMPLIED COVENANTS.

21.—(1) In a conveyance made on or after the 1st day of July, 1886, there shall, in the cases in this section mentioned, be deemed to be included, and there shall in those cases be implied, covenants to the effect in this section stated, by the person or by each person who conveys, as far as regards the subject-matter or share thereof expressed to be conveyed by him, with the person, if one, to whom the conveyance is made,

Covenants to be implied. Imp. Act, 44-45 V. c. 41, s. 7.

or with the persons jointly, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is made as tenants in common:

On conveyance for value by beneficial owner.
Imp. Act, 44-45 V. c. 41, s. 7.

- (a) In a conveyance for valuable consideration, other than a mortgage, the following covenants by the person who conveys, and is expressed to convey, as beneficial owner, namely, covenants for,

- (i) right to convey;
- (ii) quiet enjoyment;
- (iii) freedom from incumbrances; and
- (iv) further assurance;

according to the forms of covenants for such purposes set forth in Schedule B to *The Short Forms of Conveyances Act*, and therein numbered 2, 3, 4 and 5, subject to the provisions of that Act;

Rev. Stat. c. 143.

On conveyance of leaseholds for value by beneficial owner.

- (b) In a conveyance of leasehold land for valuable consideration, other than a mortgage, the following further covenant, by the person who conveys and is expressed to convey as beneficial owner:

Validity of lease.

That, notwithstanding anything by the person who so conveys, made, done, executed, or omitted, or knowingly suffered, the lease or grant creating the term or estate for which the land is conveyed is, at the time of conveyance, a good, valid, and effectual lease or grant of the property conveyed, and is in full force, unforfeited, unsurrendered, and in nowise become void or voidable, and that, notwithstanding anything as aforesaid, all the rents reserved by and all the covenants, conditions and agreements contained in the lease or grant, and on the part of the lessee or grantee, and the persons deriving title under him to be paid, observed and performed, have been paid, observed and performed, up to the time of conveyance;

On conveyance by trustee, etc.
Imp. Act, 44-45 V. c. 41, s. 7.

- (c) In a conveyance the following covenant by every person who conveys, and is expressed to convey, as trustee or mortgagee, or as personal representative of a deceased person, or as committee of a lunatic, or under an order of the court, which covenant shall be deemed to extend to every such person's own acts only, namely:

Against incumbrances.

That the person so conveying has not executed, or done, or knowingly suffered, or been party or privy to any deed, act, matter or thing,

whereby or by means whereof the subject matter of the conveyance, or any part thereof is or may be impeached, charged, affected, or incumbered in title, estate or otherwise, or whereby or by means whereof the person who so conveys is in anywise hindered from conveying such subject-matter or any part thereof, in the manner in which it is expressed to be conveyed;

- (d) In a conveyance by way of settlement the following covenant by a person who conveys and is expressed to convey as settlor, namely: On settlement for further assurance, limited.

That the person so conveying, and every person deriving title under him by deed or act or operation of law in his lifetime subsequent to that conveyance, or by testamentary disposition or devolution in law, on his death will, from time to time, and at all times, after the date of that conveyance, at the request and cost of any person deriving title thereunder, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the persons to whom the conveyance is made, and those deriving title under them, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by them or any of them shall be reasonably required.

- (2) Where in a conveyance it is expressed that by direction of a person expressed to direct as beneficial owner another person conveys, the person giving the direction, whether or not he conveys and is expressed to convey, as beneficial owner, shall be deemed to convey, and to be expressed to convey as beneficial owner the subject-matter so conveyed by his direction; and the covenants on his part mentioned in clause *a* of subsection 1 shall be implied accordingly. On conveyance by direction of beneficial owner.

- (3) The benefit of a covenant so implied shall be annexed and incident to and shall go with the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is for the whole or any part thereof from time to time vested. Enforcing covenants.

- (4) A covenant so implied may be varied or extended and as so varied or extended shall, as far as may be, operate in the like manner, and with all the like incidents, effects and consequences, as if such variations or extensions were directed in this section to be implied. R.S.O. 1914, c. 109, s. 22. Variation of covenants.

(As to implied covenants in the case of mortgages see The Rev. Stat. c. 140. Mortgages Act.)

Operation of
covenants,
inheritance.

Imp. Act,
44-45 V.
c. 41, s. 58.

Idem.

Not of
inheritance.

22.—(1) A covenant relating to land of inheritance or to land held for the life of another shall be deemed to be made with the covenantee his heirs and assigns, and shall have effect as if heirs and assigns were expressed.

(2) A covenant relating to land not of inheritance or to land not held for the life of another shall be deemed to be made with the covenantee his executors, administrators and assigns, and shall have effect as if executors, administrators and assigns were expressed. R.S.O. 1914, c. 109, s. 23.

POWERS.

Mode of
executing
powers.
Imp. Act,
22-23 V.
c. 35, s. 12.

23.—(1) A deed executed in the presence of, and attested by, two or more witnesses in the manner in which deeds are ordinarily executed and attested, shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by deed or by any instrument in writing, not testamentary, notwithstanding that it is especially required that a deed or instrument in writing, made in exercise of such power, shall be executed or attested with some additional or other form of execution or attestation or solemnity.

Saving of
other re-
quirements.

(2) This section shall not operate to defeat any direction in the deed or instrument creating the power that the consent of any particular person shall be necessary to a valid execution, or that any act shall be performed in order to give validity to any appointment, having no relation to the mode of executing and attesting the deed or instrument.

Power may
be observed.

(3) Nothing in this section shall prevent the donee of a power from executing it conformably to the power. R.S.O. 1914, c. 109, s. 24.

Disclaimer
of power by
donee.
Imp. Act,
44 and 45 V.
c. 41, s. 52.

24.—(1) A person to whom a power, whether coupled with an interest or not, is given may by deed disclaim or release or contract not to exercise the power.

Disclaimer of
power.

45-46 V.
c. 39, s. 6
(2).

(2) A person disclaiming shall not afterwards be capable of exercising or joining in the exercise of the power, and on such disclaimer the power may be exercised by the other or others or the survivor or survivors of the others of the persons to whom the power is given unless the contrary is expressed in the instrument creating the power. R.S.O. 1914, c. 109, s. 25.

Validity of
sale under
power
although
mistaken
payment to
tenant for
life.

Imp. Act,
22-23 V.
c. 35, s. 13.

25. Where, under a power of sale, a sale in good faith is made of an estate, with the timber thereon, or with any articles attached thereto, and the tenant for life, or any other party to the transaction, is by mistake allowed to receive for his own benefit a part of the purchase money or value of the timber or article, the Supreme Court, upon an action brought, or upon application made in a summary way, may declare,

that upon payment by the purchaser, or the claimant under him, of the full value of the timber or article at the time of the sale, with such interest thereon as the Court directs, and the settlement of the principal money and interest under the direction of the Court, upon such persons as in the opinion of the Court are entitled thereto, the sale ought to be established; and upon payment and settlement being made accordingly, the Court may declare the sale valid, and thereupon the legal estate shall vest and go in like manner as if the power had been duly executed, and the costs of the application, as between solicitor and client, shall be paid by the purchaser or the claimant under him. R.S.O. 1914, c. 109, s. 26.

ILLUSORY APPOINTMENTS.

26.—(1) No appointment made in exercise of any power or authority, to appoint any property, real or personal, amongst several objects, shall be invalid or impeached on the ground that an unsubstantial, illusory or nominal share only is thereby appointed to, or left unappointed to devolve upon, any one or more of the objects of such power, or upon the ground that any object of such power has been altogether excluded; but every such appointment shall be valid and effectual, notwithstanding that anyone, or more, of the objects shall not thereunder, or in default of such appointment, take more than an unsubstantial, illusory, or take no share thereof or nominal share of the property subject to such power.

Validity
of certain
appointments.

Imp. Act,
11 Geo. IV.
and 1 Wm.
IV. c. 46,
ss. 1, 2
and 3.
37 and 38 V.
c. 37, s. 1.

(2) Nothing in this section shall prejudice or affect any provision in any deed, will, or other instrument creating any such power, which declares the amount of the share or shares from which no object of the power shall be excluded or that some one or more object or objects of the power shall not be excluded or give any validity, force or effect to any appointment, other than such appointment would have had if a substantial share of the property affected by the power had been thereby appointed to, or left unappointed, to devolve upon any object of such power. R.S.O. 1914, c. 109, s. 27.

Saving of
positive re-
quirements
in constating
instrument.

TENANCY BY THE CURTESY.

27. Where a husband has issue born alive and capable of inheriting any land to which his wife is entitled in fee simple, or fee tail, if the husband survive his wife, whether such issue live or not, the husband shall, subject to the provisions of *The Married Women's Property Act*, be entitled to an estate for his natural life in such land as may not have been disposed of by her deed or will; but if he has no such issue by his wife he shall not be entitled to any further or other estate or interest in such land in the event of surviving his wife, except such as may be devised to him by her will, or such as he may become entitled to under *The Devolution of Estates Act*. R.S.O. 1914, c. 109, s. 28.

Tenancy by
the curtesy.

Imp. Rev.
Stat., 1870,
p. 129.

Rev. Stat.
c. 182.

Rev. Stat.
c. 148.

WASTE.

Waste by tenants by curtesy, dowress, etc. 6 Edw. I. (St. Gloucester), c. 5.

28. A tenant by the curtesy, a dowress, a tenant for life, or for years, and the guardian of the estate of an infant, shall be impeachable for waste, and liable in damages to the person injured. R.S.O. 1914, c. 109, s. 29.

Waste by tenant for life without impeachment of waste.

29. An estate for life without impeachment of waste shall not confer upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate. R.S.O. 1914, c. 109, s. 30, *part*.

Waste between joint tenants and tenants in common. 13 Edw. I. (St. of Westminster Sec.) c. 22.

30. Tenants in common, and joint tenants, shall be liable to their co-tenants for waste, or, in the event of a partition, the part wasted may be assigned to the tenant committing such waste, at the value thereof to be estimated as if no such waste had been committed. R.S.O. 1914, c. 109, s. 31.

Waste by lessees. 52 Hen. III. (St. of Marlbridge) c. 23.

31. Lessees making or suffering waste on the demised premises without license of the lessors shall be liable for the full damage so occasioned. R.S.O. 1914, c. 109, s. 32.

Rev. Stat. c. 88.

(*For other remedies see The Judicature Act.*)

RELEASE OF PART OF LAND FROM RENT CHARGE.

Effect of release of part of land subject to rent-charge.

32. The release from a rent-charge of part of the land charged therewith shall not extinguish the whole rent-charge, but shall operate only to bar the right to recover any part of it out of the land released, without prejudice to the rights of all persons interested in the land remaining unreleased and not concurring in or confirming the release. R.S.O. 1914, c. 109, s. 33.

Imp. Act. 23-24 V. c. 35, s. 10.

FUTURE AND CONTINGENT USES.

Abrogation of doctrine of *scintilla juris*.

33. Where by any deed, will or other instrument any land is limited to uses, all uses thereunder, whether expressed or implied by law, and whether immediate or future, or contingent or executory, or to be declared under any power therein contained, shall take effect when and as they arise by force of and by relation to the estate and seisin originally vested in the person seised to the uses; and the continued existence in him or elsewhere of any seisin to uses or *scintilla juris* shall not be necessary for the support of, or to give effect to, future or contingent or executory uses; nor shall any such seisin to uses or *scintilla juris* be deemed to be suspended, or to remain or to subsist in him or elsewhere. R.S.O. 1914, c. 109, s. 34.

Imp. Act. 23-24 V. c. 38, s. 7.

CONTINGENT REMAINDERS.

34. Every contingent remainder shall be capable of taking effect notwithstanding the determination by forfeiture, surrender or merger of any preceding estate of freehold. Unaffected by forfeiture, etc., of preceding estate. R.S.O. 1914, c. 109, s. 35.

MERGER.

35. There shall not be any merger by operation of law only of any estate, the beneficial interest in which, prior to *The Ontario Judicature Act, 1881*, would not have been deemed merged or extinguished in equity. No merger of estate by operation of law. 44 V. c. 5. R.S.O. 1914, c. 109, s. 36.

IMPROVEMENTS UNDER MISTAKE OF TITLE.

36. Where a person makes lasting improvements on land under the belief that the land is his own, he or his assigns shall be entitled to a lien upon the same to the extent of the amount by which the value of the land is enhanced by such improvements; or shall be entitled or may be required to retain the land if the court is of opinion or requires that this should be done, according as may under all circumstances of the case be most just, making compensation for the land, if retained, as the court may direct. Lien on lands for improvements under mistake of title. R.S.O. 1914, c. 109, s. 37.

PURCHASES OF REVERSIONS.

37. No purchase made in good faith, and without fraud, of any reversionary interest in property shall be opened or set aside on the ground of undervalue. Rule as to purchases of reversions. R.S.O. 1914, c. 109, s. 38.

PURCHASER FOR VALUE WITHOUT NOTICE.

38. It shall not be necessary, in order to maintain the defence of a purchase for value without notice, to prove payment of the mortgage money or purchase money or any part thereof. Onus of proof. R.S.O. 1914, c. 109, s. 39.

ASSIGNMENT TO ASSIGNOR AND ANOTHER OR TO ASSIGNOR'S WIFE.

39. Any property may be conveyed by a person to himself jointly with another person, by the like means by which it might be conveyed by him to another person, and may in like manner be conveyed or assigned by a husband to his wife, or by a wife to her husband alone or jointly with another person. Assignment of property to wife or self and others. Imp. Act. 44 and 45 V. c. 41, s. 50. R.S.O. 1914, c. 109, s. 40.

Effect of reservation of right-of-way or other easement.

40. Where by the terms of any conveyance of land, a right of way or easement is reserved or excepted from the land thereby transferred or charged, such reservation or exception shall be effectual and shall be deemed always to have been effectual to vest said right-of-way or other easement in the transferor or chargor of the land, notwithstanding that the transferee or chargee does not execute the instrument. 1926, c. 21, s. 21.

RIGHTS OF POSTHUMOUS CHILDREN.

Capacity of posthumous children to take in remainder. Imp. Act. 10 Wm. III. c. 22.

41. Where any estate is, by any marriage or other settlement, limited in remainder to, or to the use of, the first or other son or sons of the body of any person lawfully begotten, with any remainder over to, or to the use of, any other person or in remainder to, or to the use of, a daughter lawfully begotten, with any remainder to any other person, any son or daughter of such person lawfully begotten, or to be begotten, that shall be born after the decease of his or her father, shall, by virtue of such settlement, take such estate so limited to the first and other son or daughter in the same manner as if born in the lifetime of his or her father, although there may be no estate limited to trustees, after the decease of the father, to preserve the contingent remainder to such after born son, or daughter, until he or she come *in esse*, or is born, to take the same. R.S.O. 1914, c. 109, s. 41.

PRODUCTION OF CESTUIS QUE VIE, AND TENANTS FOR LIFE.

When death of *cestui que vie* presumed.

18 and 19 Car. II. c. 11, s. 1.

42. If any person, for whose life an estate is granted, remains out of Ontario or absents himself therein for the space of seven years together, so that it cannot be ascertained whether he is alive or dead, and no sufficient proof is made of the life of such person in any action commenced for recovery of such estate by the lessor or reversioner, the person upon whose life such estate depended shall be accounted as naturally dead, and in every action brought for the recovery of the estate by the lessor or reversioner, his heirs, or assigns, judgment shall be given accordingly. R.S.O. 1914, c. 109, s. 42.

Right of tenant when *cestui que vie* proved to be living.

43. If any person is evicted out of any land by virtue of section 42, and if afterwards the person, upon whose life such estate depends, returns to Ontario, or in any action to be brought for recovery of the same, is shown to be living, or to have been living at the time of the eviction, the tenant or lessee who was ousted, his executors, administrators or assigns, may re-enter, repossess, have, hold, and enjoy, the land in his former estate, for and during the life, or so long a term as the person upon whose life the estate depends shall be living; and also shall, upon action to be brought by him against the lessor, reversioner, or tenant in possession, or other person, who, since the time of the eviction, received the profits of the

Action for *mesne profits* with interest.

land, recover for damages the full profits thereof, with lawful interest for, and from, the time that he was ousted, and kept or held out of the land by such lessor, reversioner, tenant in possession, or other person, whether the person, upon whose life such estate depends is living or dead at the time of bringing of the action. R.S.O. 1914, c. 109, s. 43.

44.—(1) The Supreme Court may, on the application of any person who has any claim or demand in, or to, any remainder, reversion, or expectancy, in, or to, any estate in land, after the death of any person within age, married woman, or any other person whomsoever, upon affidavit made by the person so claiming such estate of his title, and that he has cause to believe that such minor, married woman, or other person, is dead, and that his, or her, death is concealed by the guardian, trustee, husband, or any other person, which application may be made once a year if the person aggrieved shall think fit, order that such guardian, trustee, husband, or other person concealing, or suspected to conceal, such person, do, at such time and place as the Court shall direct, on personal or other due service of such order, produce and show to such person and persons, not exceeding two, as shall in such order be named by the party prosecuting such order such minor, married woman, or other person.

Order for production of person at instance of reversioner, etc.

(2) If such guardian, trustee, husband, or such other person refuses or neglects to produce or show such minor, married woman, or such other person, on whose life any such estate depends, according to the directions of the order, the Court is hereby authorized and required to order such guardian, trustee, husband, or other person, to produce such minor, married woman, or other person concealed, in the Court, or otherwise before commissioners to be appointed by the Court, at such time and place as the Court shall direct, two of which commissioners shall be nominated by the party prosecuting such order, at his costs and charges.

Order for production of person before commissioner.

(3) If such guardian, trustee, husband, or other person, refuses or neglects to produce such minor, married woman, or other person so concealed, in Court, or before such commissioners, whereof return shall be made by such commissioners, and filed in the Central Office, at Osgoode Hall, in either, or any, of such cases, such minor, married woman, or other person, shall be taken to be dead, and it shall be lawful for any person claiming any right, title, or interest, in remainder or reversion, or otherwise, after the death of such minor, married woman or other person, to enter upon such land as if such minor, married woman, or other person were actually dead. R.S.O. 1914, c. 109, s. 44.

Presumption on failure to produce.

6 Anne, c. 72 (or c. 18 in Ruffhead's Ed.), s. 1.

45. If it appears to the Court by affidavit that such minor, married woman, or other person, is, or lately was, at some certain place out of Ontario in the affidavit to be mentioned,

Where person required to be produced is out of Ontario.

the party prosecuting such order, at his costs and charges, may send over one or both of the persons appointed by the order to view such minor, married woman, or other person, and if such guardian, trustee, husband, or other person, concealing, or suspected to conceal, such person, refuses or neglects to produce, or procure to be produced to such person or persons a personal view of such minor, married woman, or other person, then such person or persons shall make a true return of such refusal or neglect to the Court, which shall be filed in the Central Office, and thereupon such minor, married woman, or other person, shall be taken to be dead, and any person claiming any right, title, or interest, in remainder, reversion, or otherwise, after the death of such minor, married woman, or other person, may enter upon such land as if such minor, married woman, or other person were actually dead. R.S.O. 1914, c. 109, s. 45.

6 Anne,
c. 72, (or
c. 18 in Ruff-
head's
Ed.), s. 2.

When it
appears that
person
required to
be produced
was alive.

6 Anne.
c. 72 (or
c. 18 in
Ruffhead's
Ed.), s. 2.

46. If it shall afterwards appear, upon proof in any action to be brought, that such minor, married woman, or other person was alive at the time such order was made, such minor, married woman, guardian, or trustee, or other person, having any estate or interest determinable upon such life, may re-enter upon the land, and may maintain an action against those who, since the order, received the profits thereof, or their executors, or administrators, and recover full damages for the profits of the same received from the time that such minor, married woman, or other person, having any estate or interest determinable upon such life, was ousted of the possession of such land. R.S.O. 1914, c. 109, s. 46.

When it ap-
pears that
guardian,
etc., cannot
produce
person who
is alive.

6 Anne,
c. 72 (or
c. 18 in Ruff-
head's
Ed.), s. 4.

47. If any such guardian, trustee, husband, or other person, holding or having any estate or interest determinable upon the life of any other person, shall show, to the satisfaction of the Court, that he has used his utmost endeavour to procure such minor, married woman, or other person, on whose life such estate or interest depends, to appear in Court, or elsewhere according to the order, and that he cannot procure or compel such appearance, and that such minor, married woman, or other person, is living, or was living at the time such return was made and filed the Court may order that such person may continue in the possession of such estate, and receive the rents and profits thereof, during the infancy of such minor, and the life of any other person, on whose life such estate or interest next depends, as fully as he might have done if this and the three next preceding sections had not been passed. R.S.O. 1914, c. 109, s. 47.

Guardians,
trustees, etc.,
holding over
without con-
sent of re-
mainderman,
etc., deemed
trespassers.

48. Every person having an estate or interest in land determinable upon any life, and the guardian or trustee for a minor having such an estate who, after the determination of such particular estate or interest, without the express con-

sent of the person who is next and immediately entitled upon and after the determination of such particular estate or interest, holds over and continues in possession of any land, shall be deemed a trespasser, and every person entitled to any such land, upon and after the determination of such particular estate or interest, may recover in damages against every such person so holding over the full value of the profits received during such wrongful possession. R.S.O. 1914, c. 109, s. 48.

6 Anne.
c. 72 (or
c. 18 in Ruff-
head's
Ed.), s. 5.

Damages.

ASSIGNMENTS OF CHOSE IN ACTION.

49.—(1) Any absolute assignment, made on or after the 31st day of December, 1897, by writing under the hand of the assignor, not purporting to be by way of charge only, of any debt or other legal chose in action of which express notice in writing shall have been given to the debtor, trustee or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be effectual in law, subject to all equities which would have been entitled to priority over the right of the assignee if this section had not been enacted, to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same without the concurrence of the assignor. R.S.O. 1914, c. 109, s. 49 (1); 1914, c. 2, Sched. (23).

Assignment of
debt and
chose in
action.

(2) In case of an assignment of a debt or other chose in action, if the debtor, trustee or other person liable in respect of the debt or chose in action shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he thinks fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he thinks fit, pay the same into the Supreme Court under and in conformity with the provisions of law for the relief of trustees. R.S.O. 1914, c. 109, s. 49 (2).

Where several
claimants
under
assignment.

DEBENTURES OF CORPORATIONS TRANSFERABLE.

50.—(1) The bonds or debentures of a corporation made payable to bearer, or to any person named therein or bearer, may be transferred by delivery, and if payable to any person or order, after general endorsement thereof by such person, shall be transferable by delivery.

Bonds and
debentures
of corpora-
tions.

(2) Any such transfer shall vest the property in the bond or debenture in the holder thereof and enable him to maintain an action thereon in his own name. R.S.O. 1914, c. 109, s. 50.

Rights of
holder.

AUCTIONS OF ESTATES.

When sale
deemed
without
reserve.

51. Unless in the particulars or conditions of sale by auction of any land it is stated that such land will be sold subject to a reserved price, or to a right of the seller to bid, the sale shall be deemed to be without reserve. R.S.O. 1914, c. 109, s. 51.

Idem.
Prohibition
against seller
bidding.

52. Upon any sale of land by auction, without reserve, it shall not be lawful for a seller or for a puffer to bid at such sale, or for the auctioneer to take, knowingly, any bidding from the seller or from a puffer. R.S.O. 1914, c. 109, s. 52.

When seller
may bid.

53. Upon any sale of land by auction, subject to a right for the seller to bid, it shall be lawful for the seller or any one puffer to bid at such auction in such manner as the seller may think proper. R.S.O. 1914, c. 109, s. 53.

Seller not
authorized
to purchase.

54. Nothing in the next preceding three sections shall authorize any seller to become the purchaser at the sale. R.S.O. 1914, c. 109, s. 54.

FRAUDS IN SALES OR MORTGAGES OF PROPERTY.

Liability of
vendor or
mortgagor
for fraudulent
concealment
of deeds, etc.,
or falsifying
pedigree
Imp. Acts
22-23 V.
c. 35, s. 24
and 23-24 V.
c. 38, s. 8.

55. If any seller or mortgagor of property or his solicitor or agent conceals any settlement, deed, will or other instrument material to the title, or any incumbrance, from the purchaser or mortgagee, or falsifies any pedigree upon which the title depends or may depend, in order to induce him to accept the title offered or produced to him, with intent to defraud, such seller, mortgagor, solicitor or agent, irrespective of any criminal liability he may thereby incur, shall be liable at the suit of the purchaser or mortgagee, or those claiming under him, for any loss sustained by them or either or any of them, in consequence of the settlement, deed, will or other instrument or incumbrance so concealed, or of any claim made by any person under such pedigree, whose right was so concealed by the falsification of such pedigree; and in the case of land in estimating such damages where the property is recovered from such purchaser or mortgagee, or from those claiming under him, regard shall be had to any expenditure by them, or either or any of them, in improvements on the land. R.S.O. 1914, c. 109, s. 55.

EFFECT OF ORDERS OF COURT.

Order of
court not in-
validated as
against pur-
chaser for
want of jur-
isdiction, etc.

56. An order of the court under any statutory or other jurisdiction shall not, as against a purchaser, whether with or without notice, be invalidated on the ground of want of jurisdiction, or of want of any concurrence, consent, notice or service. R.S.O. 1914, c. 109, s. 56.

RELIEF FROM BUILDING RESTRICTION.

57.—(1) Where there is annexed to any land any condition or covenant that such land or any specified portion thereof is not to be built on or is to be or not to be used in a particular manner, or any other condition or covenant running with or capable of being legally annexed to land, any such condition or covenant may be modified or discharged by order of a judge of the Supreme Court. Restrictive covenants, modification or discharge of.

(2) Before making any such order the Judge shall cause notice of the application to be given to such persons as shall appear to him to be interested in the relief sought either by personal service, advertisement or by registered mail as he shall direct. Notice of application.

(3) An appeal shall lie to a divisional court from the decision of a judge under subsection 1. Appeal.

(4) Nothing in this section shall apply to building restrictions imposed by any by-law passed under the authority of *The Municipal Act*. 1922, c. 53, s. 2, *part*. Exception. Rev. Stat. c. 233.

CHAPTER 138.

The Accumulations Act.

Limitation
of period
during which
accumulation
permitted.

1.—(1) No person shall, by any deed, surrender, will, codicil, or otherwise howsoever, settle or dispose of any real or personal property so that the rents, issues, profits or produce thereof shall be wholly or partially accumulated for any longer than one of the following terms,—

(a) for the life of the grantor ;

(b) for twenty-one years from the death of the grantor or testator ;

(c) for the period of minority of any person living, or *en ventre sa mere*, at the death of the grantor or testator ;

(d) for the period of minority of any person who, under the instrument directing the accumulation, would for the time being, if of full age, be entitled to the income, or rents and profits, directed to be accumulated.

Accumula-
tions for the
purchase
of land.
Imp. Act.
55-56 Vict.
c. 58.

(2) No accumulation for the purchase of land shall be directed for any longer period than that mentioned in the preceding subsection.

Application
of invalid
accumulations.
Imp. Act.
39-40 Geo. 3,
c. 98, s. 1.

(3) Where an accumulation is directed otherwise than as aforesaid, such direction shall be null and void, and the rents, issues, profits and produce of such property so directed to be accumulated shall, so long as the same shall be directed to be accumulated contrary to the provisions of this Act, go to and be received by such person as would have been entitled thereto, if such accumulation had not been directed. R.S.O. 1914, c. 110, s. 2.

Saving
as to debts
or portions
for children.

2. Nothing in this Act shall extend to any provision for payment of debts of any grantor, settlor or deviser, or other person, or to any provision for raising portions for any child of any grantor, settlor or deviser, or for any child of any person taking any interest under any such conveyance, settlement or devise, or to any direction touching the produce of timber or wood upon any lands or tenements, but all such provisions and directions shall and may be made and given as if this Act had not been passed. R.S.O. 1914, c. 110, s. 3.

Or for
timber.

CHAPTER 139.

The Petty Trespass Act.

1. Any person who unlawfully enters into, comes upon or passes through or in any way trespasses upon any land the property of another person, which is wholly enclosed or is a garden or lawn, shall incur a penalty of not less than \$1 or more than \$10, whether any damage has or has not been occasioned thereby, recoverable under *The Summary Convictions Act*. R.S.O. 1914, c. 111, s. 2. Penalty for trespass.
Rev. Stat.
c. 121.

2. Any person found committing such a trespass may be apprehended without warrant by any peace officer, or by the owner of the land on which it is committed, or the servant of, or any person authorized by such owner, and be forthwith taken before the nearest Justice of the Peace to be dealt with according to law. R.S.O. 1914, c. 111, s. 3. Arrest of trespasser without warrant.

3. Nothing in this Act shall authorize any Justice of the Peace to hear and determine any case of trespass in which the title to land, or to any interest therein, shall be called in question or affected; but every such case shall be dealt with according to law in the same manner as if this Act had not been passed. R.S.O. 1914, c. 111, s. 4. Saving cases involving title to land.

4. Nothing in sections 1 and 2 shall extend to any case where the person trespassing acted under a fair and reasonable supposition that he had a right to do the act complained of, or to any case within section 539 of *The Criminal Code*. R.S.O. 1914, c. 111, s. 5. Saving persons claiming a right.
R.S.C.
c. 146.

5. The council of a township may pass by-laws for declaring that in the case of land, the boundary line, or any part of the boundary line, of which passes through a marsh or swamp, or any land covered with water, the same, so far as respects that part of the boundary line which so passes, shall be deemed to be wholly enclosed within the meaning of this Act if posts are maintained along such part at distances which will permit of each being clearly visible from the next post. R.S.O. 1914, c. 111, s. 6. By-laws to declare boundaries in marshes.

CHAPTER 140.

The Mortgages Act.

Interpretation.	1. In this Act,
"Conveyance."	(a) "Conveyance" shall include assignment, appointment, lease, settlement and other assurance and covenant to surrender made by deed on a sale, mortgage, demise or settlement of any property or on any other dealing with or for any property; and "convey" shall have a meaning corresponding with that of conveyance;
"Convey."	
"Incumbrance."	(b) "Incumbrance" shall include a mortgage in fee or for a less estate, a trust for securing money, a lien, and a charge of a portion, annuity or other capital or annual sum; and "incumbrancer" shall have a meaning corresponding with that of incumbrance, and shall include every person entitled to the benefit of an incumbrance, or to require payment or discharge thereof;
"Incumbrancer."	
"Land."	(c) "Land" shall include tenements and hereditaments, corporeal or incorporeal, houses and other buildings, and also an undivided share in land;
"Mortgage."	(d) "Mortgage" shall include any charge on any property for securing money or money's worth; "Mortgage money" shall mean money or money's worth secured by a mortgage; "mortgagor" shall include any person deriving title under the original mortgagor or entitled to redeem a mortgage, according to his estate, interest or right in the mortgaged property; and "mortgagee" shall include any person deriving title under the original mortgagee. R.S.O. 1914, c. 112, s. 2.
"Mortgage money."	
"Mortgagor."	
"Mortgagee."	

PART I.

RIGHTS AND OBLIGATIONS OF MORTGAGORS AND MORTGAGEES.

2.—(1) Notwithstanding any stipulation to the contrary where a mortgagor is entitled to redeem he may require the mortgagee, instead of giving a certificate of payment or reconveying and on the terms on which he would be bound to re-convey, to assign the mortgage debt and convey the mortgaged property to any third person as the mortgagor directs; and the mortgagee shall be bound to assign and convey accordingly.

Obligation on mortgagee to transfer instead of reconveying. Imp. Act, 44 and 45 v. c. 41, s. 15.

(2) The right of the mortgagor to require an assignment Idem. shall belong to and be capable of being enforced by each incumbrancer or by the mortgagor, notwithstanding any intermediate incumbrance; but a requisition of an incumbrancer shall prevail over that of the mortgagor, and as between incumbrancers a requisition of a prior incumbrancer shall prevail over that of a subsequent incumbrancer. Imp. Act. 45 and 46 V. c. 39, s. 12.

(3) This section shall not apply if the mortgagee is or has been in possession. Exception. R.S.O. 1914, c. 112, s. 3.

3. Notwithstanding any stipulation to the contrary a mortgagor, as long as his right to redeem subsists, shall be entitled, at reasonable times, on his request, and at his own cost and on payment of the mortgagee's costs and expenses in that behalf, to inspect and make copies or abstracts of or extracts from the documents of title relating to the mortgaged property in the custody or power of the mortgagee. Right of mortgagor to inspect title deeds. Imp. Act. 44 and 45 V. c. 41, s. 16. R.S.O. 1914, c. 112, s. 4.

4. A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land, as to which no notice of his intention to take possession or to enter into receipt of the rents and profits thereof shall have been given by the mortgagee, may sue for such possession, or sue or distrain for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person, and in that case he may sue or distrain jointly with such other person. Action for possession of land by mortgagor. R.S.O. 1914, c. 112, s. 5.

5.—(1) All money payable to a mortgagor on an insurance of the mortgaged property, including effects, whether affixed to the freehold or not, being or forming part thereof, shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received. Application of insurance money.

(2) Without prejudice to any obligation to the contrary imposed by law or by special contract a mortgagee may require that all money received on an insurance of the mortgaged property be applied in or towards the discharge of the money due under his mortgage. Idem. R.S.O. 1914, c. 112, s. 6. Imp. Act. 44 and 45 V. c. 41, s. 23.

6. There shall, in the several cases in this section mentioned, be deemed to be included, and there shall in those several cases be implied, covenants to the effect in this section stated, by the person or by each person who conveys, as far as regards the subject-matter or share thereof expressed to be conveyed by him with the person, if one, to whom the conveyance is made, or with the persons jointly, if more than one, to Covenants to be implied. Imp. Act. 44 and 45 V. c. 41, s. 7.

whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is made as tenants in common, that is to say:—

On mortgage,
by beneficial
owner

(a) In a conveyance by way of mortgage the following covenants by the person who conveys, and is expressed to convey as beneficial owner, namely, covenants,

(i) for payment of the mortgage money and interest, and observance in other respects of the proviso in the mortgage;

(ii) for good title;

(iii) for right to convey;

(iv) that, on default, the mortgagee shall have quiet possession of the land; free from all incumbrances;

(v) that the mortgagor will execute such further assurances of the said lands as may be requisite; and

(vi) that the mortgagor has done no act to incumber the land mortgaged,

Rev. Stat.
c. 145.

according to the forms of covenants for such purposes set forth in Schedule B to *The Short Forms of Mortgages Act*, subject to the provisions of that Act:

On mortgage
of leaseholds,
by beneficial
owner.

(b) In a conveyance by way of mortgage of leasehold property, the following further covenants by the person who conveys and is expressed to convey, as beneficial owner, namely,

Validity of
lease.

(i) that the lease or grant creating the term or estate for which the land is held is, at the time of conveyance, a good, valid and effectual lease or grant of the land conveyed, and is in full force, unforfeited, and unsundered, and in nowise become void or voidable, and that all the rents reserved by, and all the covenants, conditions and agreements contained in the lease or grant and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed and performed, have been paid, observed and performed up to the time of conveyance; and also

Payment of
rent and per-
formance of
covenants.

(ii) that the person so conveying, or the persons deriving title under him, will at all times, as long as any money remains on the security of the conveyance, pay, observe and

perform, or cause to be paid, observed and performed, all the rents reserved by, and all the covenants, conditions and agreements contained in the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed and performed, and will keep the person to whom the conveyance is made and those deriving title under him indemnified against all actions, proceedings, costs, charges, damages, claims and demands, if any, to be incurred or sustained by him or them by reason of the non-payment of such rent, or the non-observance or non-performance of such covenants, conditions and agreements, or any of them. R.S.O. 1914, c. 112, s. 7.

7. In a mortgage, where more persons than one are expressed to convey as mortgagors, or to join as convenantors, the implied covenants on their part shall be deemed to be joint and several covenants by them; and where there are more mortgagees than one the implied covenant with them shall be deemed to be a covenant with them jointly unless the amount is expressed to be secured to them in shares or distinct sums; in which latter case the implied covenant with them shall be deemed to be a covenant with each severally in respect of the share or distinct sum secured to him. R.S.O. 1914, c. 112, s. 8.

Implied covenants in mortgages are joint and several.
Imp. Act, s. 28.

8.—(1) A mortgagee of freehold or leasehold property may take and receive from the mortgagor a release of the equity of redemption in such property, or may purchase the same under any judgment or decree or execution without thereby merging the mortgage debt as against any subsequent mortgagee or person having a charge on the same property.

Release of equity of redemption without merger of debt.

(2) Where a prior mortgagee so acquires the equity of redemption of the mortgagor no subsequent mortgagee shall be entitled to foreclose or sell such property without redeeming or selling, subject to the rights of such prior mortgagee, in the same manner as if such prior mortgagee had not acquired the equity of redemption.

Position of subsequent mortgagee.

(3) This section shall not affect any priority or claim any mortgagee may have under the registry laws. R.S.O. 1914, c. 112, s. 9.

Priority under registry.

9. Where a person entitled to any freehold land by way of mortgage has died, and his executor or administrator has become entitled to the money secured by the mortgage, or has assented to a bequest thereof, or has assigned the mortgage debt, such executor or administrator, if the mortgage money

Powers of executors of mortgagee.

was paid to the testator or intestate in his lifetime, or on payment of the principal money and interest due on the mortgage, or on receipt of the consideration money for the assignment, may convey, assign, release or discharge the mortgage debt and the mortgagee's estate in the land; and such executor or administrator shall have the same power as to any part of the land on payment of some part of the mortgage debt, or on any arrangement for exonerating the whole or any part of the mortgaged land, without payment of money; and such conveyance, assignment, release or discharge shall be as effectual as if the same had been made by the persons having the mortgagee's estate. R.S.O. 1914, c. 112, s. 10.

(As to Mortgages or Advances on Joint Account see *The Mercantile Law Amendment Act, Rev. Stat. c. 161.*)

Effect of receipts of surviving mortgagee, etc.

10.—(1) The payment in good faith of any money to and the receipt thereof by the survivor or survivors of two or more mortgagees, or the executors or administrators of such survivor, or their or his assigns, shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof, unless the contrary is expressly declared by the instrument creating the security. R.S.O. 1914, c. 112, s. 11.

Where mortgagee cannot be found.

Payment into court.

Order for discharge.

Payment out.

Notice to mortgagee.

When amount offered questioned.

(2) When a mortgagor or any person entitled to pay off a mortgage desires to do so and the mortgagee, or one of several mortgagees, cannot be found or when a sole mortgagee or the last surviving mortgagee is dead and no probate of his will has been granted or letters of administration issued, or where from any other cause a proper discharge cannot be obtained, or cannot be obtained without undue delay, the court may permit payment into court of the amount due upon the mortgage and may make an order discharging the mortgage.

(3) The money paid into court shall be paid out of court with any accrued interest to the mortgagee or mortgagees or to the executor or administrator of the mortgagee or as the court by order for payment into court or any subsequent order may direct.

(4) The court may require notice to be given by advertisement or as may be deemed proper to the mortgagee or those claiming under him either before or after making the order.

(5) When the amount admitted to be due upon the mortgage appears to be open to question the court may as a condition of making the order require payment into court of a sum in excess of the amount admitted to be due and in such case the additional sum shall be subject to the further order of the court.

(6) The court may require payment into court of an additional sum to answer any claim by the mortgagee for subsequent interest and costs.

(7) When a mortgagee has died and all money due upon the mortgage was paid to him in his lifetime or has been paid to a person entitled to receive the same after his death and for any reason a discharge or reconveyance cannot be obtained without undue delay and expense the court may make an order discharging the mortgage.

(8) Upon the registration of an order discharging a mortgage it shall have the same effect as the registration of a certificate of discharge signed by the mortgagee would have under *The Registry Act*. 1926, c. 21, s. 30.

11. The purchaser in good faith of a mortgage may, to the extent of the mortgage, and except as against the mortgagor, set up the defence of purchase for value without notice in the same manner as a purchaser of the mortgaged property might do. R.S.O. 1914, c. 112, s. 12.

12. Notwithstanding any stipulation in the mortgage to the contrary, the right of a mortgagee to distrain for interest in arrear upon a mortgage shall be limited to the goods and chattels of the mortgagor, and to such of them as are not exempt from seizure under execution. R.S.O. 1914, c. 112, s. 13, *part*.

13.—(1) As against creditors of a mortgagor, or person in possession of mortgaged premises under a mortgagor, the right, if any, to distrain upon the mortgaged premises for arrears of interest or for rent, in the nature of or in lieu of interest under the provisions of any mortgage shall be restricted to one year's arrears of such interest or rent. R.S.O. 1914, c. 112, s. 14 (1), *part*.

(2) This restriction shall not apply unless some one of such creditors shall be an execution creditor, or unless there shall be an assignee for the general benefit of such creditors appointed before lawful sale of the goods and chattels distrained, nor unless the officer executing such writ of execution or such assignee shall, by notice in writing to be given to the person distraining or his attorney, bailiff, or agent before such lawful sale, claim the benefit of such restriction.

(3) When such notice is given the distrainer shall relinquish to the officer or assignee the goods and chattels so distrained, upon receiving one year's arrears of such interest or rent and his reasonable costs of distress, or if such arrears and costs shall not be paid or tendered he shall sell only so much of the goods and chattels distrained as shall be necessary to

satisfy one year's arrears of such interest or rent and the reasonable costs of distress and sale, and shall thereupon relinquish any residue of them, and pay any residue of money, proceeds thereof so distrained, to such officer or assignee.

Reimburse-
ment of
officer or
assignee.

(4) An officer executing an execution, or an assignee who pays any money to relieve goods and chattels from distress under this section, shall be entitled to reimburse himself therefor out of the proceeds of the sale thereof. R.S.O. 1914, c. 112, s. 14 (2-4).

Notice of sale.

14. Goods and chattels distrained by a mortgagee shall not be sold except after such public notice as is now required to be given by a landlord who sells goods and chattels distrained for rent. R.S.O. 1914, c. 112, s. 14 (5), *part*.

Payment of
principal
upon default.
After 12th
June, 1903.

15.—(1) Notwithstanding any agreement to the contrary, where default has been made in the payment of any principal money secured by a mortgage of freehold or leasehold property, the mortgagor or person entitled to make such payment may at any time, upon payment of three months' interest on the principal money so in arrear, pay the same, or he may give the mortgagee at least three months' notice, in writing, of his intention to make such payment at a time named in the notice, and in the event of his making such payment on the day so named he shall be entitled to make the same without any further payment of interest except to the date of payment. R.S.O. 1914, c. 112, s. 16 (1), *part*.

Exception.

(2) If the mortgagor or person entitled to make such payment fails to make the same at the time mentioned in the notice he shall thereafter be entitled to make such payment only on paying the principal money so in arrear and interest thereon to the date of payment together with three months' interest in advance.

Saving.

(3) Nothing in this section shall affect or limit the right of the mortgagee to recover by action or otherwise the principal money so in arrear after default has been made. R.S.O. 1914, c. 112, s. 16 (2, 3).

Right to
redeem
after five
years.

16.—(1) Where any principal money or interest secured by a mortgage of freehold or leasehold property is not, under the terms of the mortgage, payable till a time more than five years after the date of the mortgage, then if, at any time after the expiration of such five years, any person liable to pay or entitled to redeem tenders or pays to the person entitled to receive the money the amount due for principal money and interest to the time of such tender or payment, together with three months' further interest in lieu of notice, no further interest shall be chargeable, payable or recoverable at any time thereafter on the principal money or interest due under the mortgage. R.S.O. 1914, c. 112, s. 17 (1), *part*.

(2) Nothing in this section shall affect the provisions of subsection 5 of section 39 of *The Loan and Trust Corporations Act*, or shall apply to any mortgage given by a joint stock company or other corporation nor to any debenture issued by any such company or corporation for the payment of which security has been given on freehold or leasehold property. R.S.O. 1914, c. 112, s. 17 (2).

Rev. Stat.
c. 223.

Exception.

17.—(1) Where provision is made in a mortgage that if interest is paid promptly it will be accepted at a lower rate than that provided in such mortgage, and interest at such lower rate has been paid according to such condition up to the time when all the principal money has become payable, any person liable to pay or entitled to redeem shall be entitled to pay the principal money and interest on the same at such lower rate at any time after the time for payment of the principal money on giving three months' notice of his intention to make such payment or on paying three months' interest at such lower rate in lieu of notice. R.S.O. 1914, c. 112, s. 18 (1), *part*.

Paying off mortgage when provision made for a lower rate for punctual payment.

(2) If the mortgagor, or person entitled to make such payment, fails to make the same at the time mentioned in such notice he shall thereafter be entitled to make such payment only on paying the principal and interest at the lower rate to the date of payment, together with three months' interest in advance. R.S.O. 1914, c. 112, s. 18 (2).

Mortgagor failing to pay according to notice.

NOTE: As to right of surety to acquiring assignment of security upon payment of debt, and as to right of mortgagees making advances on joint account, see Mercantile Law Amendment Act.

Rev. Stat.
c. 161.

PART II.

STATUTORY POWERS.

18. Where any principal money is secured by mortgage of land, the mortgagee shall, at any time after the expiration of four months from the time when the principal money shall have become payable, according to the terms of the mortgage, or after any interest on the principal money shall have been in arrear for six months, or after any omission to pay any premium on any insurance which, by the terms of the mortgage, ought to be paid by the mortgagor, have the following powers to the like extent as if they had been in terms conferred by the mortgage but not further, namely:

Powers incident to mortgages after default for certain time. Imp. Act. 44 and 45 V. c. 41, s. 19 (2).

- (a) A power to sell, or concur with any other person in selling, the whole or any part of the mortgaged property by public auction or private contract, subject to any reasonable conditions he may think fit to make, and to buy in at an auction and to

Power of sale.

rescind or vary contracts for sale, and to re-sell the land, from time to time, in like manner without being answerable for any loss occasioned thereby;

Power to insure.

(b) A power to insure and keep insured against loss or damage by fire any building or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the mortgaged property, and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the mortgage money and with the same priority and with interest at the same rate as the mortgage money. R.S.O. 1914, c. 112, s. 19, *part*.

Receipts for purchase money sufficient discharges.

19. A receipt for purchase money given by the person exercising the power of sale by the next preceding section conferred shall be a sufficient discharge to the purchaser, who shall not be bound to see to the application of the purchase money. R.S.O. 1914, c. 112, s. 20.

Notice before sale.

20.—(1) No sale under the power conferred by section 18 shall be made until after two months' notice in writing (Form 1) has been given to every subsequent incumbrancer, and to the mortgagor, either personally or at his usual or last place of residence in Ontario.

When to be given.

(2) The notice may be given at any time after any default in making a payment provided for by the mortgage.

Case of an infant.

(3) In case of the death of the person entitled subject to the mortgage, and of his interest passing to an infant, the notice shall be given to his personal representative as well as to the infant.

Service upon infant.

(4) The notice to the infant shall be served upon his guardian, and if he has no guardian upon the Official Guardian, and in every case upon the infant himself if over the age of twelve years. R.S.O. 1914, c. 112, s. 21.

Title of purchaser.

21. Where a conveyance has been made in professed exercise of the power of sale conferred by section 18 the title of the purchaser shall not be liable to be impeached on the ground that no case had arisen to authorize the exercise of such power, or that such power had been improperly or irregularly exercised, or that such notice has not been given; but any person damnified by an unauthorized, improper or irregular exercise of the power shall have his remedy against the person exercising the power. R.S.O. 1914, c. 112, s. 22.

44 and 45
Vic. Imp.,
c. 41, s. 21
(2).

Application of purchase money.

22. The money arising from the sale shall be applied by the person receiving the same as follows:

Firstly, in payment of all the expenses incident to the sale or incurred in any attempted sale;

Secondly, in discharge of all interest and costs then due in respect of the mortgage under which the sale was made;

Thirdly, in discharge of all the principal money then due in respect of such mortgage; and

Fourthly, subject to the provisions of section 9 of *The Dower Act*, in payment of the amounts due to the subsequent incumbrancers according to their priorities,

Rev. Stat.
c. 100.

and the residue shall be paid to the mortgagor. R.S.O. 1914, c. 112, s. 23; 1924, c. 37, s. 2, *part*.

23. The person exercising the power of sale shall have power to convey or assign to and vest in the purchaser the property sold for all the estate and interest therein of the mortgagor and of which he had power to dispose. R.S.O. 1914, c. 112, s. 24.

Conveyance to
the purchaser.

24. At any time after the power of sale shall have become exercisable the person entitled to exercise the same shall be entitled to demand and recover from the mortgagor all deeds and documents in his possession or power relating to the mortgaged property, or to the title thereto, which he would have been entitled to demand and recover if the property had been conveyed, appointed, surrendered or assigned to and was then vested in him for all the estate and interest of the mortgagor and of which he had power to dispose; and where the legal estate is outstanding in a trustee the mortgagee, or any purchaser from him, shall be entitled to call for a conveyance of the legal estate to the same extent as the mortgagor could have called for such a conveyance if the mortgage had not been made. R.S.O. 1914, c. 112, s. 25.

Right to title
deeds and
conveyance of
legal estate.

25. So much of this Part as confers a power to sell shall not apply in the case of a mortgage which contains a power of sale except as in section 26 provided; and so much as confers a power to insure shall not apply in the case of a mortgage which contains a power to insure; nor shall any of the provisions of this Part apply to a mortgage which contains a declaration that this Part shall not apply thereto. R.S.O. 1914, c. 112, s. 26.

Application
of Part II.

26.—(1) Where a mortgage made in pursuance of *The Short Forms of Mortgages Act* contains a power of sale in the form No. 14, in Column One of Schedule B to that Act, the mortgagee may, in exercising the power, in lieu of taking the proceedings provided for by such form, Column Two, take proceedings under and have the benefit of the provisions of this Part, except that such power shall not be exercisable until after at least four months' default and at least two months'

Mortgagee's
option as
to proceedings.
Rev Stat.
c. 145.

notice, or such longer periods as may by the power contained in such mortgage be fixed therefor, and this Part shall apply to a sale made under such power.

Idem.

Rev. Stat.
c. 145.

(2) Where a mortgage purporting to be made in pursuance of *The Short Forms of Mortgages Act* contains a power of sale which provides for a sale without notice, the mortgagee may take proceedings to sell under and have the benefit of the provisions of this Part as fully and effectually as if the mortgage had not contained a power of sale. R.S.O. 1914, c. 112, s. 27 (1, 2).

PART III.

GENERAL PROVISIONS AS TO POWER OF SALE.

Contents
of notice.

27. A notice of exercising a power of sale shall state the amounts claimed to be due for principal, interest and costs respectively. R.S.O. 1914, c. 112, s. 28.

Restrictions
as to pro-
ceedings.

28.—(1) Where, pursuant to any condition or proviso contained in a mortgage, there has been made or given a demand or notice either requiring payment of the money secured by such mortgage, or any part thereof, or declaring an intention to proceed under and exercise the power of sale therein contained, no further proceeding and no action either to enforce such mortgage, or with respect to any clause, covenant or provision therein contained, or to the mortgaged property or any part thereof, shall, until after the lapse of the time at or after which, according to such demand or notice, payment of the money is to be made or the power of sale is to be exercised or proceeded under, be commenced or taken unless and until an order permitting the same has been obtained from a judge of the county or district court of the county or district in which the mortgaged property or any part thereof is situate, or from a judge of the Supreme Court.

Proof on
which order
may be
granted.

(2) The order may be obtained *ex parte* or upon such notice as the judge may direct upon such proof as satisfies the judge that it is reasonable and equitable that the proposed action or proceeding should be permitted.

Exception.

(3) This section shall not apply to proceedings to stay waste or other injury to the mortgaged property. R.S.O. 1914, c. 112, s. 29, *part*.

Payment
made in terms
of notice.

29.—(1) Where such demand or notice requires payment of all money secured by or under a mortgage the person making such demand or giving such notice shall be bound to accept and receive payment of the same if made as required by the terms of such demand or notice.

(2) If there is a dispute as to the costs payable by the person by or on whose behalf such payment is either made or tendered such costs shall, on three clear days' notice to such person by the person claiming the same, be taxed and ascertained by the clerk of the county or district court, or by the local master of the county or district in which the mortgaged property or any part thereof is situate. Payment or tender of costs.

(3) Where the time limited by the demand or notice requiring payment expires before the taxation of the costs has been completed, the amount due apart from the costs claimed may be paid and payment of the amount allowed for costs within ten days after the issue of a certificate of taxation shall be deemed a compliance with the demand or notice. Compliance with demand.

(4) A mortgagee's costs of and incidental to the exercise of a power of sale, whether under this Part or otherwise, may, without an order, be taxed by one of the taxing officers of the Supreme Court at Toronto or by a local master having jurisdiction in the county or district in which the mortgaged property or any part of it is situate at the instance of any person interested. Costs,—taxation of.

(5) The costs of the taxation shall be in the discretion of the taxing officer. R.S.O. 1914, c. 112, s. 30, *part*. Discretion as to.

FORM I.

NOTICE OF SALE UNDER MORTGAGE.

I hereby require you on or before the day of 19 ,
(a day not less than two calendar months from the service of the notice, and not less than six months after the default), to pay off the principal money and interest secured by a certain mortgage dated the day of 19 , and expressed to be made between *(here state parties and describe mortgaged property)*, which mortgage was registered on the day of 19 , *(and if the mortgage has been assigned add: and has since become the property of the undersigned)*. And I hereby give you notice that the amounts due on the said mortgage for principal, interest, and costs respectively, are as follows: *(set the same forth)*.

And unless the principal money, interest and costs are paid on or before the said day of 19 , I shall sell the property comprised in the said mortgage under the authority of *The Mortgages Act*.
 Dated the day of 19 .

R.S.O. 1914, c. 112. Form I.

CHAPTER 141.

The Estates Tail Act.

Interpretation	1.—(1) In this Act,
"Actual tenant in tail."	(a) "Actual tenant in tail" shall mean exclusively the tenant of an estate tail which has not been barred, and such tenant shall be deemed an actual tenant in tail, although the estate tail may have been divested or turned into a right;
"Base fee."	(b) "Base fee" shall mean exclusively that estate in fee simple into which an estate tail is converted where the issue in tail are barred, but persons claiming estates by way of remainder or otherwise are not barred;
"Estate."	(c) "Estate" shall include an estate in equity as well as at law and any interest, charge, lien or incumbrance in, upon or affecting land, either at law or in equity, and any interest, charge, lien or incumbrance in, upon or affecting money subject to be invested in the purchase of land;
"Estate tail."	(d) "Estate tail" shall include a base fee into which an estate tail has been converted;
"Land."	(e) "Land" shall include messuages, lands, tenements, rents and hereditaments of any tenure and whether corporeal or incorporeal, and any undivided share thereof;
"Money subject to be invested in the purchase of land."	(f) "Money subject to be invested in the purchase of land" shall include money, whether raised or to be raised, and whether the amount thereof is or is not ascertained, and shall extend to stocks and funds, and real and other securities, the produce of which is directed to be invested in the purchase of land and the land to be purchased with such money or produce shall include land of any tenure out of Ontario, where such land is within the scope or meaning of the trust or power directing or authorizing the purchase;
"Tenant in tail."	(g) "Tenant in tail" shall include a person who, where an estate tail has been barred and converted into a base fee, would have been tenant of such estate tail if the same had not been barred;

(h) "Tenant in tail entitled to a base fee" shall mean "Tenant in tail entitled to a base fee."
 a person entitled to a base fee, or to the ultimate beneficial interest in a base fee, and who, if the base fee had not been created, would have been actual tenant in tail.

(2) Every assurance already made or hereafter to be made Settlement.
 whether by deed, will, Act of this Legislature or otherwise, by which land heretofore has been or may hereafter be entailed, or agreed or directed to be entailed, shall be deemed a settlement.

(3) Every appointment made in exercise of any power Appointment in exercise of a power under a settlement.
 contained in a settlement, or of any other power arising out of the power contained in a settlement, shall be considered as a part of such settlement, and the estate created by such appointment shall be considered as having been created by such settlement.

(4) Where such settlement is made by will the time of What deemed date of settlement.
 the death of the testator shall be considered the time when such settlement was made. R.S.O. 1914, c. 113, s. 2.

2. All warranties of land made or entered into by a tenant Invalidity of warranties.
 in tail thereof shall be absolutely void against the issue in tail, and all persons whose estates are to take effect after the determination or in defeasance of the estate tail. R.S.O. 1914, c. 113, s. 3.

3. Every actual tenant in tail, whether in possession, Power to dispose of lands in fee simple or for a less estate, etc.
 remainder, contingency or otherwise, may dispose of, for an estate in fee simple absolute, or for any less estate, the land entailed as against all persons, claiming the land entailed by force of any estate tail vested in or which might be claimed by or which, but for some previous act, would have been vested in, or might have been claimed by the person making the disposition at the time of his making the same, and also as against all persons, including His Majesty, whose estates are to take effect after the determination, or in defeasance of such estate tail; saving always the rights of all persons in respect of estates prior to the estate tail in respect of which such disposition is made, and the rights of all other persons except those against whom such disposition is, by this Act, authorized to be made. R.S.O. 1914, c. 113, s. 4.

4. The power of disposition hereinbefore contained shall Exceptions to s. 3.
 not extend to tenants of estates tail who, by any Act, are restrained from barring their estates tail or to tenants in tail after possibility of issue extinct. R.S.O. 1914, c. 113, 34 and 35 Hen. VIII. c. 20.
 s. 5.

5. Where an estate tail has been barred and converted Power to enlarge base fees saving the rights of certain persons.
 into a base fee the person who, if such estate tail had not been barred, would have been actual tenant in tail of land

may dispose of such land as against all persons, including His Majesty, whose estates are to take effect after the determination, or in defeasance of the base fee into which the estate tail has been converted, so as to enlarge the base fee into a fee simple absolute, saving always the right of all persons, in respect of estates prior to the estate tail which has been converted into a base fee, and the rights of all other persons except those against whom such disposition is by this Act authorized to be made. R.S.O. 1914, c. 113, s. 6.

Entail of
expectant
interest.

6. Nothing in this Act shall enable any person to dispose of any land entailed in respect of any expectant interest which he may have as issue inheritable to any estate tail therein. R.S.O. 1914, c. 113, s. 7.

Extent of
estate created
by a tenant in
tail by way of
mortgage or
for any other
limited
purpose.

7. If a tenant in tail makes a disposition of the land under this Act, by way of mortgage, or for any other limited purpose, such disposition shall, to the extent of the estate thereby created, be an absolute bar to all persons as against whom such disposition is by this Act authorized to be made, notwithstanding any intention to the contrary expressed or implied in the deed by which the disposition is effected; but if the estate created by such disposition is only an estate *pur autre vie*, or for years absolute or determinable, or if, by a disposition under this Act by a tenant in tail, an interest, charge, lien or incumbrance is created without a term of years absolute or determinable, or any greater estate for securing or raising the same, then such disposition shall be a bar only so far as may be necessary to give full effect to the mortgage, or to such other limited purpose, or to such interests, lien, charge or incumbrance, notwithstanding any intention to the contrary expressed or implied in the deed by which the disposition is effected. R.S.O. 1914, c. 113, s. 8.

PROTECTOR.

Who to be
deemed the
protector of
the settlement.

8. If at the time there is a tenant in tail of land under a settlement, and there is subsisting in the same land, or any part of it, under the same settlement, an estate for years, determinable on the dropping of a life or lives, or any greater estate, not being an estate for years, prior to the estate tail, then the person who is the owner of the prior estate, or the first of such prior estates, if more than one, then subsisting under the same settlement, or who would have been the owner if no absolute disposition thereof had been made, the first of such prior estates, if more than one, being all for the purposes of this Act deemed the prior estate, shall be the protector of the settlement so far as regards the land in which such prior estate is subsisting, and shall, for all the purposes of this Act, be deemed the owner of such prior estate although the same may have been charged or incum-

bered either by the owner thereof or by the settlor or otherwise howsoever, and although the whole of the rents and profits are exhausted, or are required for the payment of the charges and incumbrances on such prior estate, and although such prior estate may have been absolutely disposed of by the owner thereof, or by or in consequence of the bankruptcy or insolvency of such owner, or by any other act or default of such owner; and an estate by the curtesy in respect of the estate tail, or of any prior estate created by the same settlement, shall be deemed a prior estate under the same settlement within the meaning of this section; and an estate by way of resulting use or trust to or for the settlor shall be deemed an estate under the same settlement within the meaning of this section. R.S.O. 1914, c. 113, s. 9.

9. Where two or more persons are owners, under a settlement within the meaning of this Act, of a prior estate the sole owner of which estate, if there had been only one, would, in respect thereof, have been the protector of such settlement, each of such persons, in respect of such undivided share as he could dispose of, shall, for all the purposes of this Act, be deemed the owner of a prior estate, and shall in exclusion of the other or others of them be the sole protector of such settlement to the extent of such undivided share. R.S.O. 1914, c. 113, s. 10.

10. Where a married woman would, if single, be the protector of a settlement in respect of a prior estate which is not thereby settled or agreed, or directed to be settled to her separate use, she and her husband together shall, in respect of such estate, be the protector of such settlement and shall be deemed one owner; but if such prior estate has by such settlement been settled or agreed, or directed to be settled to her separate use, or is, by *The Married Women's Property Act*, her separate estate, she alone in respect of such estate shall be the protector of such settlement. R.S.O. 1914, c. 113, s. 11.

11. Except in the case of a lease hereinafter provided for, where an estate is limited by a settlement, by way of confirmation, or where the settlement merely has the effect of restoring an estate, such estate shall, for the purpose of this Act, so far as regards the protector of the settlement be deemed an estate subsisting under such settlement. R.S.O. 1914, c. 113, s. 12.

12. Where a lease at a rent is created or confirmed by a settlement, the person in whose favour such lease is created or confirmed shall not, in respect thereof, be the protector of such settlement. R.S.O. 1914, c. 113, s. 13.

Who may
not be
protector.

13. No woman in respect of her dower, and no bare trustee, heir, executor, administrator or assign, in respect of any estate taken by him as such shall be the protector of a settlement. R.S.O. 1914, c. 113, s. 14.

Who shall be
the protector
where the
owner of the
prior estate is,
by the last
two sections
excluded.

14. Where under a settlement there is more than one estate prior to an estate tail, and the person who is the owner, within the meaning of this Act, of such prior estate in respect of which, but for the last preceding two sections or one of them, he would have been the protector of the settlement, is by virtue of such sections, or either of them, excluded from being the protector, then the person, if any, who, if such estate did not exist, would be the protector of the settlement shall be such protector. R.S.O. 1914, c. 113, s. 15.

For protectors in cases of dispositions before July, 1846, and of settlements before January, 1834, see R.S.O. 1897, c. 122, ss. 17-19.

Power to any
settlor to
appoint
protector.

15. Any settlor entailing land may appoint, by the settlement by which the land is entailed, any number of persons *in esse*, not exceeding three, to be protector of the settlement in lieu of the person who would have been the protector if this section had not been enacted, and either for the whole or any part of the period for which such person might have continued protector; and, by means of a power to be inserted in such settlement, to perpetuate, during the whole or any part of such period, the protectorship of the settlement in any one person or number of persons *in esse* whom the donee of the power thinks proper, by deed, to appoint protector of the settlement in the place of any one person, or number of persons, who may die, or, by deed, relinquish his or their office of protector; and the person or persons so appointed shall, in case of there being no other person then protector of the settlement, be the protector, and shall, in case of there being any other person then protector of the settlement, be protector jointly with such other person; but the number of the persons to compose the protector by virtue or means of any such appointment shall never exceed three. R.S.O. 1914, c. 113, s. 16.

Registration
of deeds
appointing
protectors

16.—(1) Every deed by which a protector is appointed under a power in a settlement, and every deed by which a protector relinquishes his office shall be void unless registered in the registry office of the registry division wherein the land referred to lies, within six months after the execution thereof.

Who may
be eligible
as protector.

(2) The person who, but for the next preceding section, would have been sole protector of the settlement may be one of the persons to be appointed protector under that section, if the settlor thinks fit, and shall, unless otherwise directed by the settlor, act as sole protector, if the other persons

constituting the protector have ceased to be so by death or relinquishment of the office by deed, and no other person has been appointed in their place. R.S.O. 1914, c. 113, s. 17.

17.—(1) If any person, protector of a settlement,

Supreme
Court as
protector
in cases of
disability.

(a) is a lunatic, idiot, or of unsound mind, whether he has or has not been so found; or

(b) is convicted of treason or felony; or

(c) not being the owner of a prior estate under a settlement is an infant; or,

(d) if it is uncertain whether he is living or dead,

the Supreme Court shall be the protector of the settlement in lieu of such person.

(2) If any settlor entailing land declares, in the settlement by which the land is entailed, that the person who, as owner of a prior estate under such settlement, would be entitled to be protector of the settlement shall not be the protector, and does not appoint any person to be protector in his stead, the Supreme Court shall, as to the land in which the prior estate is subsisting, be the protector of the settlement during the continuance of such estate.

Idem,
if no
appointment.

(3) If in any other case there is subsisting under a settlement an estate prior to an estate tail under the same settlement, and such prior estate is sufficient to qualify the owner thereof to be protector of the settlement, and there happens at any time to be no protector of the settlement as to the land in which the prior estate is subsisting, the Supreme Court shall, while there is no such protector and the prior estate is subsisting, be the protector of the settlement as to such land. R.S.O. 1914, c. 113, s. 18.

Idem.

18. If at the time when any person, actual tenant in tail of land under a settlement, but not entitled to the remainder or reversion in fee immediately expectant on the determination of his estate tail, is desirous of making, under this Act, a disposition of the land entailed, there is a protector of such settlement, then the consent of such protector shall be requisite to enable such actual tenant in tail to dispose of the land entailed to the full extent to which he is hereinbefore authorized to dispose of the same; but such actual tenant in tail may, without such consent, make a disposition under this Act of the land entailed, which shall be good against all persons who, by force of any estate tail vested in or which might be claimed by, or which, but for some previous act or default, would have been vested in or might have been claimed by the person making the disposition at the time of his making the same, may claim the land entailed. R.S.O. 1914, c. 113, s. 19.

Requirement
of consent of
protector to
disposition..

In case of
conversion
into base fee.

19. Where an estate tail has been converted into a base fee, so long as there is a protector of the settlement by which the estate tail was created, the consent of such protector shall be requisite to enable the person who would have been tenant of the estate tail if the same had not been barred, to exercise, as to the land in respect of which there is such protector, the power of disposition hereinbefore contained. R.S.O. 1914, c. 113, s. 20.

Powers of
protector.

20. Any device, shift, or contrivance by which it is attempted to control the protector of a settlement in giving his consent, or to prevent him in any way from using his absolute discretion in regard to his consent, and also any agreement entered into by the protector of a settlement to withhold his consent, shall be void; and the protector of a settlement shall not be deemed to be a trustee in respect of his power of consent; and no Court shall control or interfere to restrain the exercise of his power of consent or treat his giving consent as a breach of trust. R.S.O. 1914, c. 113, s. 21; 1914, c. 2, Sched. (24).

Exclusion of
certain rules
of equity.

21. The rules of equity in relation to dealings and transactions between the donee of a power and any object of the power in whose favour the same may be exercised shall not apply to dealings and transactions between the protector of a settlement and a tenant in tail under the same settlement upon the occasion of the protector giving his consent to a disposition by a tenant in tail under this Act. R.S.O. 1914, c. 113, s. 22.

Confirmation
of avoidable
estate by a
subsequent
disposition
under
this Act.

22.—(1) Where a tenant in tail of land under a settlement has created in such land, or any part thereof, a voidable estate in favour of a purchaser for valuable consideration and afterwards, by an assurance other than a lease not requiring registration under section 25, makes a disposition, under this Act, of the land in which such voidable estate has been created, or any part thereof, such disposition, whatever its object may be, and whatever may be the extent of the estate intended to be thereby created, shall, if made by the tenant in tail with the consent of the protector of the settlement, or by the tenant in tail alone, if there be no such protector, have the effect of confirming such voidable estate in the land thereby disposed of to its full extent as against all persons except those whose rights are saved by this Act.

Consent
of protector.

(2) If, at the time of making such disposition, there is a protector of the settlement, and such protector does not consent to the disposition, and the tenant in tail is not without such consent capable under this Act of confirming the voidable estate to its full extent, then such disposition shall have the effect of confirming such voidable estate so far as such tenant in tail would then be capable under this Act of confirming the same without such consent.

(3) If such disposition is made to a purchaser for valuable consideration, not having express notice of the voidable estate, the voidable estate shall not be confirmed as against such purchaser and the person claiming under him. R.S.O. 1914, c. 113, s. 23.

23. If a base fee in any land and the remainder or reversion in fee in the same land are united in the same person, and there is no intermediate estate between the base fee and the remainder or reversion, the base fee shall not merge, but shall be *ipso facto* enlarged into as large an estate as the tenant in tail, with the consent of the protector, if any, might have created by any disposition under this Act, if such remainder or reversion had been vested in any other person. R.S.O. 1914, c. 113, s. 24.

24.—(1) Every disposition of land under this Act by a tenant in tail thereof shall be effected by some one of the assurances, not being a will, by which such tenant in tail could have made the disposition if his estate were an estate at law in fee simple absolute, and no disposition by a tenant in tail shall be of any force, under this Act, unless made or evidenced by deed.

(2) No disposition by a tenant in tail resting only in contract, either expressed or implied, or otherwise, and whether supported by a valuable or meritorious consideration or not, shall be of any force, under this Act, notwithstanding such disposition is made or evidenced by deed. R.S.O. 1914, c. 113, s. 25.

25. No assurance by which any disposition of land is effected under this Act by a tenant in tail thereof, except a lease for any term not exceeding twenty-one years, to commence from or within twelve months from the date of such lease when such a lease is at rack-rent or not less than five-sixths parts of rack-rent, and except a lease made under the powers conferred by section 32 of *The Settled Estates Act*, shall have any operation under this Act unless it is registered in the registry office of the registry division wherein the land referred to lies within six months after the execution thereof. R.S.O. 1914, c. 113, s. 26.

26.—(1) The consent of a protector of a settlement to the disposition under this Act of a tenant in tail shall be given either by the same assurance by which the disposition is effected or by a deed distinct from the assurance, and executed either on or at any time before the day on which the assurance is made, otherwise the consent shall be void.

(2) If the protector of a settlement gives his consent to the disposition of a tenant in tail by a distinct deed it shall be considered that such protector has given an absolute and

unqualified consent, unless, in such deed, he refers to the particular assurance by which the disposition is effected, and confines his consent to the disposition thereby made.

Irrevocability
of a consent.

(3) The protector of a settlement who, under this Act, has given his consent to the disposition of a tenant in tail shall not revoke such consent.

A married
woman
protector.

(4) A married woman being, either alone or jointly with her husband, protector of a settlement may, under this Act, in the same manner as if she were a *feme sole*, give her consent to the disposition of a tenant in tail.

Necessity for
registration of
consent by
distinct deed.

(5) The consent of the protector of a settlement to the disposition of a tenant in tail shall, if given by a deed distinct from the assurance by which the disposition is effected, be void unless such deed is registered in the registry office of the registry division wherein the land referred to lies, either at or before the time of the registration of the assurance. R.S.O. 1914, c. 113, s. 27.

Equitable
jurisdiction of
the courts
excluded from
giving any
effect to dis-
positions in
tail, etc.

27.—(1) In the case of a disposition of land under this Act by the tenant in tail thereof, and in the case of a consent by the protector of a settlement to such a disposition, the equitable jurisdiction of the courts in regard to the specific performance of contracts and the supplying of defects in the execution of the powers of disposition given by this Act to tenants in tail, or the powers of consent given by this Act to protectors of settlements, and the supplying under any circumstances of the want of execution of such powers of disposition and consent respectively, and in regard to giving effect in any other manner to any act or deed by a tenant in tail or protector of a settlement, which before the passing of *The Administration of Justice Act of 1873* would not, in a court of law, be an effectual disposition or consent within the meaning of this Act shall be altogether excluded, either on the behalf of a person claiming for a valuable or meritorious consideration or otherwise.

36 V. c. 8.

Idem.

(2) No disposition of land under this Act by a tenant in tail thereof in equity, and no consent by a protector of a settlement to such a disposition, shall be of any force unless such disposition or consent would have been, in case of an estate tail at law, before *The Administration of Justice Act of 1873*, an effectual disposition or consent within the meaning of this Act in a court of law. R.S.O. 1914, c. 113, s. 28.

When the
Supreme Court
may consent
to a dis-
position by
a tenant in
tail.

28. Where the Supreme Court is the protector of a settlement such Court, while protector of the settlement, shall, on motion or petition in a summary way by a tenant in tail under such settlement, have full power to consent to a disposition, under this Act by such tenant in tail; and the disposition to be made by such tenant in tail upon such motion or petition

shall be such as may be approved of by the Court, and the Court may make such orders in the matter as may be thought necessary; and if the Court, in lieu of any person is protector of a settlement, and there is another person protector of the same settlement jointly with such first mentioned person, the disposition by the tenant in tail, though approved of by the Court, shall not be valid unless such other person, being protector, consents thereto in the manner in which the consent of the protector is, by this Act, required to be given. R.S.O. 1914, c. 113, s. 29.

29. Where the Supreme Court is the protector of a settle- Evidence.
ment no document or instrument, as evidence of the consent of such protector to the disposition of a tenant in tail under such settlement, shall be requisite beyond the order in obedience to which the disposition is made. R.S.O. 1914, c. 113, s. 30.

30. Land to be sold, whether freehold or leasehold, or of Character of money subject to be invested in lands to be entailed.
any other tenure, where the money arising from the sale thereof is subject to be invested in the purchase of land to be settled so that any person, if the land were purchased, would have an estate tail therein, and also money subject to be invested in the purchase of land to be settled so that any person, if the land were purchased, would have an estate tail therein, shall, for all the purposes of this Act, be treated as the land to be purchased, and be considered subject to the same estates as the land to be purchased would, if purchased, have been actually subject to; and all the previous sections in this Act, so far as circumstances will admit, shall, in the case of the land to be so sold, apply to such land in the same manner as if the land to be purchased with the money to arise from the sale were directed to be freehold, and were actually purchased and settled; and shall, in the case of money subject to be invested in the purchase of land to be so settled, apply to such money in the same manner as if such money were directed to be laid out in the purchase of freehold land, and such land were actually purchased and settled; except that, where under this section a disposition is to be made of leasehold land for years absolute or determinable, so circumstanced, or of money so circumstanced, such leasehold land or money shall, as to the person in whose favour or for whose benefit the disposition is made be treated as personal estate, and the assurance by which the disposition of such leasehold land or money is effected shall be an assignment by deed which shall have no operation under this Act unless registered in the registry office of the registry division in which the land therein referred to lies within six months after the execution thereof. R.S.O. 1914, c. 113, s. 31.

CHAPTER 142.

The Partition Act.

INTERPRETATION.

"Court "

1. In this Act,

"Court" shall mean the Supreme Court.

"Land."

"Land" shall include lands, tenements, and hereditaments, and all estate and interests therein. R.S.O. 1914, c. 114, s. 2.

PARTITION.

Who may be compelled to make partition or sale.

2. All joint tenants, tenants in common, and coparceners, all dowresses, and parties entitled to dower, tenants by the curtesy, mortgagees or other creditors having liens on, and all parties interested in, to or out of, any land in Ontario, may be compelled to make or suffer partition or sale of the land, or any part thereof, whether the estate is legal and equitable or equitable only. R.S.O. 1914, c. 114, s. 4.

Who may take proceedings for partition.

3.—(1) Any person interested in land in Ontario, or the guardian appointed by a surrogate court of an infant entitled to the immediate possession of any estate therein, may take proceedings for the partition of such land or for the sale thereof under the directions of the Court if such sale is considered by the Court to be more advantageous to the parties interested. R.S.O. 1914, c. 114, s. 5 (1).

When proceedings may be commenced.

(2) Where the land is held in joint tenancy or tenancy in common or coparcenary by reason of a devise or an intestacy no proceedings shall be taken until one year after the decease of the testator or person dying intestate in whom the land was vested. 1927, c. 28, s. 8 (1).

Appointment of guardian to estate of person unheard of for three years.

4.—(1) Where any person interested in the land has not been heard of for three years or upwards, and it is uncertain whether such person is living or dead, the Court upon the application of any one interested in the land may appoint a guardian to take charge of the interest of such person and of those who, in the event of his being dead, are entitled to his share or interest in the land. R.S.O. 1914, c. 114, s. 6 (1); 1927, c. 28, s. 8 (2).

(2) The guardian shall, in the proceedings, represent such absent person and those who, should he be dead, are entitled to his share or interest in the land, and whether they or any of them are infants or otherwise under disability; and his acts in relation to such share or interest shall be binding on such absent person and all others claiming or entitled to claim under or through him, and shall be as valid as if done by him or them.

Powers
of such
guardian.

(3) The Court upon proof of such absence of such person as affords reasonable ground for believing such person to be dead, upon the application of the guardian, or any one interested in the estate represented by the guardian, may deal with the estate or interest of such person, or the proceeds thereof, and may order payment of the proceeds, or the income or produce thereof, to the person who, in the event of such absent person being dead, appears to be entitled to the same. R.S.O. 1914, c. 114, s. 6 (2, 3).

Power of
the Court to
deal with
the estate.

SALES.

5.—(1) In any action or proceeding for partition or administration, or in any action or proceeding in which a sale of land in lieu of partition is ordered, and in which the estate of any tenant in dower or tenant by the curtesy or for life is established, if the person entitled to the estate is a party, the Court shall determine whether the estate ought to be exempted from the sale or whether the same should be sold; and in making such determination regard shall be had to the interests of all the parties.

Sales,
including
estates in
dower or by
the curtesy
or for life.

(2) If a sale is ordered including such estate, all the estate and interest of every such tenant shall pass thereby; and no conveyance or release to the purchaser shall be required from such tenant; and the purchaser, his heirs and assigns, shall hold the premises freed and discharged from all claims by virtue of the estate or interest of any such tenant, whether the same be to any undivided share or to the whole or any part of the premises sold.

What to
pass to
purchaser.

(3) The Court may direct the payment of such sum in gross out of the purchase money to the person entitled to dower or estate by the curtesy or for life, as may be deemed, upon the principles applicable to life annuities, a reasonable satisfaction for such estate; or may direct the payment to the person entitled of an annual sum or of the income or interest to be derived from the purchase money or any part thereof, as may seem just, and for that purpose may make such order for the investment or other disposition of the purchase money or any part thereof as may be necessary. R.S.O. 1914, c. 114, s. 7.

Compensa-
tion to
owners of
particular
estates.

Determining
value of
claim to
inchoate
right of
dower.

6. Where a married woman is a party to such action or proceeding in respect to an inchoate right of dower, the Court shall, in case of sale, determine the value of such right according to the principles applicable to deferred annuities and survivorships, and shall order the amount of such value to be paid; or shall order the payment to such married woman of an annual sum, or of such income or interest as is provided in the preceding section and such payment shall be a bar to any right or claim of dower. R.S.O. 1914, c. 114, s. 8.

Effect upon
persons under
a disability.

7. A partition or sale made by the Court shall be as effectual for the apportioning or conveying away of the estate or interest of any married woman, infant or lunatic, party to the proceedings by which the sale or partition is made or declared, as of a person competent to act for himself. R.S.O. 1914, c. 114, s. 9.

CHAPTER 143.

The Short Forms of Conveyances Act.

1. In this Act,Interpreta-
tion.

(a) "Land" shall include freehold tenements and hereditaments, whether corporeal or incorporeal, and any undivided part or share therein;

(b) "Party" and "Parties" shall include a body politic or corporate, as well as an individual. R.S.O. 1914, c. 115, s. 2.

2. Where a deed of land made according to the form set forth in Schedule A, or any other deed of land expressed to be made in pursuance of this Act or referring thereto contains any of the forms of words contained in Column One of Schedule B, and distinguished by any number therein, such deed shall have the same effect as if it contained the form of words in Column Two of Schedule B, distinguished by the same number as is annexed to the form of words used in such deed; but it shall not be necessary, in any such deed, to insert any such number. R.S.O. 1914, c. 115, s. 3.

Effect of
deed made
according to
Schedule A
and col. 1
of Sched-
ule B.

3.—(1) Parties who use any of the forms in the first column of Schedule B may substitute for the words "Grantor" or "Grantee" any name or other designation, and in every such case a corresponding substitution shall be taken to be made in the corresponding form in the second column.

Parties may
substitute
names for
"grantor" or
"grantee."

(2) Such parties may substitute the feminine gender for the masculine, or the plural number for the singular, in any of the forms in the first column, and corresponding changes shall be taken to be made in the corresponding forms in the second column.

May substi-
tute feminine
for masculine
or plural for
singular.

(3) Such parties may introduce into, or annex to, any of the forms in the first column any express exceptions from, or other express qualifications thereof respectively, and the like exceptions or qualifications shall be taken to be made from or in the corresponding forms in the second column.

May introduce
exceptions.

(4) Such parties may add the name or other designation of any person or persons, or class or classes of persons, or any other words at the end of form two of the first column,

May add
names or
designations.

so as thereby to extend the words thereof to the acts of any additional person or persons, or class or classes of persons, or of all persons whomsoever; and in every such case the covenants 2, 3 and 4, or such of them as may be employed in such deed, shall be taken to extend to the acts of the person or persons, class or classes of persons so named. R.S.O. 1914, c. 115, s. 4.

Effect of
deeds failing
to take effect
under this
Act.

4. Any deed or part of a deed which fails to take effect by virtue of this Act shall, nevertheless, be as effectual to bind the parties thereto as if this Act had not been passed. R.S.O. 1914, c. 115, s. 5.

[See also *The Conveyancing and Law of Property Act*, *Rev. Stat. c. 137, s. 14.*]

SCHEDULE A.

This Indenture made the _____ day of _____, one thousand nine hundred and _____, in pursurance of *The Short Forms of Conveyances Act*. Between (here insert names of parties and recitals, if any), Witnesseth, that in consideration of _____ now paid by the said (grantee) to the said (grantor) the receipt whereof is hereby by him acknowledged, he the said (grantor) doth grant unto the said (grantee) in fee simple (or otherwise as the case may be) all, etc., (parcels)

(Here insert covenants, or any other provisions.)

In witness whereof the said parties hereto have hereunto set their hands and seals.

R.S.O. 1914, c. 115, Sched. "A."

SCHEDULE B.

COLUMN ONE.

COLUMN TWO.

1. The said grantor covenants with the said grantee.

1. And the said grantor doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree, with and to the said grantee, his heirs, executors, administrators and assigns, in manner following, that is to say:

2. That he has the right to convey the said lands to the said grantee notwithstanding any act of the said grantor.

2. That for and notwithstanding any act, deed, matter or thing by the said grantor done, executed, committed, or knowingly or wilfully permitted or suffered to the contrary, he, the said grantor, now hath in himself good right, full power and absolute authority to convey the said lands, and other the premises hereby conveyed, or intended so to be, with their and every of their appurtenances, unto the said grantee, in manner aforesaid, and according to the true intent of these presents.

COLUMN ONE.

COLUMN TWO.

3. And that the said grantee shall have quiet possession of the said lands.

3. And that it shall be lawful for the said grantee, his heirs, executors, administrators and assigns, from time to time and at all times hereafter, peaceably and quietly to enter upon, have, hold, occupy, possess and enjoy the said lands and premises hereby conveyed, or intended so to be, with their and every of their appurtenances; and to have, receive and take the rents, issues and profits thereof, and of every part thereof to and for his and their use and benefit, without any let, suit, trouble, denial, eviction, interruption, claim or demand whatsoever of, from or by him the said grantor, or his heirs, or any person claiming or to claim, by, from, under or in trust for him, them or any of them.

4. Free from all incumbrances.

4. And that free and clear and freely and absolutely acquitted, exonerated and for ever discharged or otherwise by the said grantor or his heirs well and sufficiently saved, kept harmless and indemnified of, from and against any and every former and other gift, grant, bargain, sale, jointure, dower, use, trust, entail, will, statute, recognizance, judgment, execution, extent, rent, annuity, forfeiture, re-entry, and any and every other estate, title, charge, trouble and incumbrance whatsoever, made, executed, occasioned or suffered by the said grantor or his heirs, or by any person claiming, or to claim, by, from, under or in trust for him, them or any of them.

5. And the said grantor covenants with the said grantee that he will execute such further assurances of the said lands as may be requisite.

5. And the said grantor doth hereby, for himself, his heirs, executors and administrators, covenant, promise, and agree with and to the said grantee, his heirs, executors, administrators and assigns, that he the said grantor, his heirs, executors and administrators, and all and every other person who-soever having or claiming, or who shall or may hereafter have or claim, any estate, right, title or interest whatsoever in, to, or out of the said lands and premises hereby conveyed, or intended so to be, or any of them, or any part thereof, by, from, under or in trust for him, them, or any of them, shall and will, from time to time, and at all times hereafter, upon every reasonable request, and at the costs and charges of the said grantee, his heirs, executors, administrators or assigns, make, do, execute, or cause to be made, done or executed, all such further and other lawful acts, deeds, things, devices, conveyances and assurances in the law whatsoever, for the better more perfectly, and absolutely conveying and assuring the said lands and premises hereby conveyed, or intended so to be, and every part thereof, with their appurtenances, unto the said grantee, his heirs, executors, administrators and assigns, in manner aforesaid as by the said grantee, his heirs, executors, administrators or assigns, his or their counsel in the law shall be reasonably devised, advised or required, so as no such further assurances

COLUMN ONE.

COLUMN TWO.

contain or imply any further or other covenant or warranty than against the acts and deeds of the person who shall be required to make or execute the same, and his heirs, executors or administrators only, and so as no person who shall be required to make or execute such assurances shall be compellable for the making or executing thereof, to go or travel from his usual place of abode.

6. And the said grantor covenants with the said grantee that he will produce the title deeds enumerated hereunder, and allow copies to be made of them, at the expense of the said grantee.

6. And the said grantor doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree with and to the said grantee, his heirs, executors, administrators and assigns, that the said grantor and his heirs shall and will, unless prevented by fire or other inevitable accident, from time to time, and at all times hereafter, at the request, costs and charges of the said grantee, his heirs, executors, administrators or assigns, or his or their solicitor, agent or counsel, at any trial or hearing in any action or otherwise, as occasion shall require, produce all and every or any deed, instrument or writing hereunder written, for the manifestation, defence and support of the estate, title and possession of the said grantee, his heirs, executors, administrators and assigns, in or to the said lands and premises hereby conveyed, or intended so to be, and at the like request, costs and charges, shall and will make and deliver, or cause to be made and delivered, true and attested or other copies or abstracts of the same deeds, instruments and writings respectively, or any of them, and shall and will permit and suffer such copies and abstracts to be examined and compared with the said original deeds, by the said grantee, his heirs, executors, administrators, or assigns, or such person as he or they shall for that purpose direct and appoint.

7. And the said grantor covenants with the said grantee that he has done no act to incumber the said lands.

7. And the said grantor, for himself, his heirs, executors and administrators, doth hereby covenant, promise and agree, with and to the said grantee, his heirs, executors, administrators and assigns, that he hath not at any time heretofore made, done, committed, executed, or wilfully or knowingly suffered any act, deed, matter or thing whatsoever, whereby or by means whereof the said lands and premises hereby conveyed, or intended so to be, or any part or parcel thereof are, is or shall or may be in anywise impeached, charged, affected or incumbered in title, estate or otherwise howsoever.

8. And the said grantor releases to the said grantee all his claims upon the said lands.

8. And the said grantor hath released, remised and for ever quitted claim, and by these presents doth release, remise and for ever quit claim, unto the said grantee, his heirs, executors, administrators and assigns, all, and all manner of right, title, interest, claim and demand whatsoever, in, to and out of the said lands and premises hereby granted, or intended so to be, and every part and parcel thereof,

COLUMN ONE.

COLUMN TWO.

so as that neither he nor his heirs, executors, administrators or assigns shall nor may, at any time hereafter, have claim, pretend to, challenge or demand the said lands and premises or any part thereof, in any manner howsoever, but the said grantee, his heirs, executors, administrators and assigns, and the same lands and premises shall from henceforth forever hereafter be exonerated and discharged of and from all claims and demands whatsoever which the said grantor might or could have upon him in respect of the said lands, or upon the said lands.

9. And the said wife of the said grantor hereby bars her dower in the said lands.

9. And the said wife of the said grantor for and in consideration of the sum of one dollar of lawful money of Canada, to her in hand paid by the said grantee at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted and released, and by these presents doth grant and release unto the said grantee, his heirs, executors, administrators and assigns, all her dower and right and title which, in the event of her surviving her said husband, she might or would have to dower, in, to or out of the lands and premises hereby conveyed or intended so to be.

R.S.O. 1914, c. 115, Sched. "B."

CHAPTER 144.

The Short Forms of Leases Act.

Effect of
lease made
according to
Schedule A
and Col. 1
of Sched. B.

1. Where a lease, under seal made according to the form set forth in Schedule A, or any other such lease expressed to be made in pursuance of this Act or referring thereto, contains any of the forms of words contained in column one of Schedule B, and distinguished by any number therein, such lease shall have the same effect as if it contained the form of words contained in column two of Schedule B, distinguished by the same number as is annexed to the form of words used in such lease; but it shall not be necessary, in any such lease, to insert any such number. R.S.O. 1914, c. 116, s. 2.

Parties may
substitute any
name or
designation.

2.—(1) Parties who use any of the forms in the first column of Schedule B, may substitute for the words "Lessee" or "Lessor" any name or other designation, and in every such case a corresponding substitution shall be taken to be made in the corresponding form in the second column.

May substi-
tute feminine
for masculine
or plural for
singular.

(2) Such parties may substitute the feminine gender for the masculine, or the plural number for the singular in the forms in the first column, and corresponding changes shall be taken to be made in the corresponding forms in the second column.

May
introduce
exceptions.

(3) Such parties may introduce into or annex to any of the forms in the first column any express exceptions from or express qualifications thereof respectively, and the like exceptions or qualifications shall be taken to be made from or in the corresponding forms in the second column.

Application
of covenants
to heirs and
assigns.

(4) Where the premises demised are of freehold tenure the covenants 2 to 9 shall be taken to be made with and the proviso 12 to apply to the heirs and assigns of the lessor; and where the premises demised are of leasehold tenure such covenants and proviso shall be taken to be made with and apply to the lessor, his executors, administrators and assigns.

"Lessor,"
meaning of.

(5) Where the word "lessor" occurs in the second column it shall, when the premises demised are of freehold tenure, include the heirs, executors, administrators and assigns of the lessor, and when the premises demised are of leasehold tenure it shall include the executors, administrators

and assigns of the lessor, and where the word "lessee" occurs in the second column it shall include the executors, administrators and assigns of the lessee. R.S.O. 1914, c. 116, s. 3.

3. Any lease or part of a lease which fails to take effect by virtue of this Act shall nevertheless be as effectual to bind the parties thereto as if this Act had not been passed. R.S.O. 1914, c. 116, s. 4.

4. Unless the contrary is expressly stated in the lease all covenants not to assign or sub-let without leave entered into by a lessee in any lease under this Act shall run with the land demised, and shall bind the executors, administrators and assigns of the lessee whether mentioned in the lease or not, unless it is by the terms of the lease otherwise expressly provided, and the proviso for re-entry contained in Schedule B shall, when inserted in a lease, apply to a breach of either an affirmative or negative covenant. R.S.O. 1914, c. 116, s. 5.

SCHEDULE A.

FORM OF LEASE.

This indenture, made the _____ day of _____ one thousand nine hundred and _____ in pursuance of *The Short Forms of Leases Act*, between _____, of _____, the first part, and _____, of the second part, Witnesseth, that in consideration of the rents, covenants and agreements, herein-after reserved and contained on the part of the lessee, the lessor doth demise and lease unto the lessee, his executors, administrators and assigns all that (*here insert a description of the premises with sufficient certainty*).

To have and to hold the said demised premises for and during the term of _____, to be computed from the _____ day of _____, one thousand nine hundred and _____, and from thenceforth next ensuing and fully to be complete and ended.

Yielding and paying therefor yearly and every year during the said term unto the said lessor, his (*or their*) heirs, executors, administrators, or assigns, the sum of _____, to be payable on the following days and times, that is to say (*on, etc.*), the first of such payments to become due and be made on the day of _____ next, (*here insert covenants or any other provisions*). In witness whereof, etc.

R.S.O. 1914, c. 116, Sched. "A."

SCHEDULE B.

COLUMN ONE.

COLUMN TWO.

1. The said lessee covenants with the said lessor.

2. To pay rent.

3. And to pay taxes, except for local improvements.

4. And to repair, reasonable wear and tear and damage by fire, lightning and tempest only excepted.

5. And to keep up fences.

6. And not to cut down timber.

7. And that the said lessor may enter and view state of repair, and that the said lessee will repair according to notice in writing, reasonable wear and tear, and damage by fire, lightning and tempest only excepted.

1. And the said lessee doth hereby covenant with the said lessor in manner following, that is to say:

2. That he, the said lessee, will, during the said term, pay unto the said lessor the rent hereby reserved, in manner hereinbefore mentioned, without any deduction whatsoever.

3. And also will pay all taxes, rates, duties and assessments whatsoever, whether municipal, parliamentary or otherwise, now charged or hereafter to be charged upon the said demised premises, or upon the said lessor on account thereof, except municipal taxes for local improvements or works assessed upon the property benefited thereby.

4. And also will, during the said term, well and sufficiently repair, maintain, amend and keep the said demised premises with the appurtenances in good and substantial repair, and all fixtures and things thereto belonging, or which at any time during the said term shall be erected and made by the lessor, when, where, and so often as need shall be, reasonable wear and tear and damage by fire, lightning and tempest only excepted.

5. And also will, from time to time, during the said term, keep up the fences and walls of or belonging to the said premises, and make anew any parts thereof that may require to be new-made in a good and husband-like manner and at proper seasons of the year.

6. And also will not at any time during the said term hew, fell, cut down or destroy, or cause or knowingly permit or suffer to be hewed, felled, cut down or destroyed, without the consent in writing of the lessor, any timber or timber trees, except for necessary repairs, or firewood, or for the purpose of clearance as herein set forth.

7. And that it shall be lawful for the lessor and his agents, at all reasonable times during the said term, to enter the said demised premises to examine the condition thereof; and further, that all want of reparation that upon such view shall be found, and for the amendment of which notice in writing shall be left at the premises, the said lessee will, within three calendar months next after such notice, well and sufficiently repair and make good accordingly, reasonable wear and tear and damage by fire, lightning and tempest only excepted.

COLUMN ONE

COLUMN TWO.

8. And will not assign or sub-let without leave.

9. And that he will leave the premises in good repair reasonable wear and tear and damage by fire, lightning and tempest only excepted.

10. Provided, that the lessee may remove his fixtures.

11. Provided, that in the event of fire, lightning or tempest, rent shall cease until the premises are rebuilt.

12. Proviso for re-entry by the said lessor on non-payment of rent or non-performance of covenants.

8. And also that the lessee shall not, nor will during the said term, assign, transfer or set over or otherwise by any act or deed procure the said premises or any of them to be assigned, transferred, set over or sub-let unto any person or persons whomsoever without the consent in writing of the lessor first had and obtained.

9. And further, that the lessee will, at the expiration, or other sooner determination of the said term, peaceably surrender and yield up unto the said lessor the said premises hereby demised with the appurtenances, together with all the buildings, erections and fixtures erected or made by the lessor thereon, in good and substantial repair and condition, reasonable wear and tear, and damage by fire, lightning and tempest only excepted.

10. Provided, and it is hereby expressly agreed that the lessee may at or prior to the expiration of the term hereby granted, take remove and carry away from the premises hereby demised all fixtures, fittings, plant, machinery, utensils, shelving, counters, safes or other articles upon the said premises in the nature of trade or tenants' fixtures or other articles belonging to or brought upon the said premises by the said lessee, but the lessee shall in such removal do no damage to the said premises, or shall make good any damage which he may occasion thereto.

11. Provided, and it is hereby expressly agreed, that in case the premises hereby demised or any part thereof shall, at any time during the said term, be burned down or damaged by fire, lightning or tempest so as to render the same unfit for the purposes of the said lessee, then and so often as the same shall happen, the rent hereby reserved, or a proportionate part thereof, according to the nature and extent of the injuries sustained shall abate, and all or any remedies for recovery of said rent or such proportionate part thereof shall be suspended until the said premises shall have been rebuilt or made fit for the purposes of the said lessee.

12. Provided, and it is hereby expressly agreed, that if and whenever the rent hereby reserved, or any part thereof, shall be unpaid for fifteen days after any of the days on which the same ought to have been paid, although no formal demand shall have been made thereof, or in case of the breach or non-performance of any of the covenants or agreements herein contained on the part of the lessee, then and in either of such cases it shall be lawful for the lessor at any time hereafter, into and upon the said demised premises or any part thereof, in the name of the whole to re-enter, and the same to have again, repossess and enjoy, as of his

COLUMN ONE.

COLUMN TWO.

former estate; anything, hereinafter contained to the contrary notwithstanding.

13. The said lessor covenants with the said lessee for quiet enjoyment.

13. And the lessor doth hereby covenant with the lessee, that he paying the rent hereby reserved and performing the covenants hereinbefore on his part contained, shall and may peaceably possess and enjoy the said demised premises for the term hereby granted, without any interruption or disturbance from the lessor, or any other person or persons lawfully claiming by, from or under him.

R.S.O. 1914, c. 116, Sched. "B."

CHAPTER 145.

The Short Forms of Mortgages Act.

1. In this Act,Interpreta-
tion.

(a) "Land" shall include freehold tenements and hereditaments, whether corporeal or incorporeal, and any undivided part or share therein;

"Land."

(b) "Party" and "Parties" shall include a body politic or corporate as well as an individual. R.S.O. 1914, c. 117, s. 2.

"Party."

2.—(1) Where a mortgage of land, made according to the form set forth in Schedule A, or any other mortgage of land expressed to be made in pursuance of this Act, or referring thereto, contains any of the forms of words contained in Column One of Schedule B, and distinguished by any number therein, such mortgage shall have the same effect as if it contained the form of words in Column Two of Schedule B, distinguished by the same number as is annexed to the form of words used in such mortgage; but it shall not be necessary in any such mortgage to insert any such number.

Effect of
mortgage
made
according to
Schedule A
and Col. 1
of Sched. B.

(2) Where a blank occurs in any of the forms in Column Two such form shall be read as if it were filled in with the words which supply the place of the blank in the corresponding form in Column One. R.S.O. 1914, c. 117, s. 3.

3.—(1) Parties who use any of the forms in the first column of Schedule B may substitute for the words "Mortgagor" or "Mortgagee" any name or other designation; and in every such case corresponding substitutions shall be taken to be made in the corresponding forms in the second column.

Parties may
substitute
names or
designations;

(2) Such parties may substitute the feminine gender for the masculine, or the plural number for the singular, in any of the forms in the first column; and corresponding changes shall be taken to be made in the corresponding forms in the second column.

and feminine
for masculine
gender or
plural for
singular;

(3) Such parties may introduce into or annex to any of the forms in the first column any express exceptions from or other express qualifications thereof respectively; and the like exceptions or qualifications shall be taken to be made from or in the corresponding forms in the second column. R.S.O. 1914, c. 117, s. 4.

and may
introduce
exceptions or
qualifications.

Mortgages not
taking effect
under this Act
how far valid.

4. Any such mortgage, or part of such mortgage, which fails to take effect by virtue of this Act shall nevertheless be as effectual to bind the parties thereto as if this Act had not been passed. R.S.O. 1914, c. 117, s. 5.

[See also *The Conveyancing and Law of Property Act, Rev. Stat. c. 137.*]

SCHEDULE A.

FORM OF MORTGAGE.

This Indenture, made the _____ day of _____, one thousand nine hundred and _____, in pursuance of *The Short Forms of Mortgages Act*, between (here insert the names of parties and recitals, if any). Witnesseth, that in consideration of _____ of lawful money of Canada, now paid by the said mortgagee to the said mortgagor, the receipt whereof is hereby acknowledged, the said mortgagor doth grant and mortgage unto the said mortgagee, his heirs, executors, administrators and assigns for ever, all (parcels).

(Here insert provisoes, covenants or other provisions.)

In witness whereof the said parties hereto have hereunto set their hands and seals.

R.S.O. 1914, c. 117, Sched. "A."

SCHEDULE B.

COLUMN ONE.

COLUMN TWO.

1. And the said wife of the said mortgagor for and in consideration of the sum of one dollar of lawful money of Canada, to her in mortgage hereby hand paid by the said mortgagee at or before the sealing and delivery of these presents, bars her dower in the receipt whereof is hereby acknowledged, the said mortgagor doth grant and release unto the said mortgagee, his heirs, executors, administrators and assigns, all her dower, and right and title which, in the event of her surviving her said husband, she might or would have to dower, in, to, or out of the lands and premises hereby conveyed or intended so to be.

R.S.O. 1914, c. 117, Sched "B," part.

2. Provided this upon this express condition that if the said mortgage to be mortgagor, his heirs, executors, administrators or assigns, or any of them, do and shall well void on payment of and truly pay or cause to be paid unto the said mortgagee, his executors, administrators or assigns the just and full sum of (amount of principal money) of lawful money of Canada with interest thereon at the rate of (rate of interest) per centum per annum on the day and

COLUMN ONE.

centum as follows:

and taxes
and performance
of statute labour.

COLUMN TWO.

time and in the manner following, that is to say (*terms of payment of principal and interest*), without any deduction or abatement, and do and shall also pay any taxes, rates, levies, charges or assessments upon the said lands or in respect thereof no matter by whom or by what authority imposed which the said mortgagee, his executors, administrators or assigns shall have paid or shall have been rendered liable to pay, and do and shall also pay all such other sums as the said mortgagee, his executors, administrators or assigns may be entitled to by virtue of these presents, then these presents and everything in the same shall be absolutely null and void; but nothing in this proviso or these presents shall make the mortgagor, his heirs, executors, administrators or assigns liable to pay to the mortgagee, his executors, administrators or assigns any tax, rate or charge imposed upon the mortgagee, his executors, administrators or assigns in respect of the income derived by him or them in respect of the mortgage money or in respect of the devolution of the interest of the said mortgagee in the said lands or mortgage money.

R.S.O. 1914, c. 117, Sched. "B," *part*; 1927, c. 28, s. 9.

3. The said mortgagor covenants with the said mortgagee.

3. And the said mortgagor doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree to and with the said mortgagee, his heirs, executors, administrators and assigns, in manner following, that is to say:

4. That the mortgagor will pay the mortgage money and interest, and observe the above proviso.

4. That the said mortgagor, his heirs, executors, administrators or some or one of them shall and will well and truly pay or cause to be paid unto the said mortgagee, his executors, administrators or assigns, the said sum of money in the above proviso mentioned, with interest for the same as aforesaid, at the days and times and in the manner above limited for payment thereof, and shall and will in everything well, faithfully and truly do, observe, perform, fulfil and keep all and singular the provisions, agreements and stipulations in the said above proviso particularly set forth, according to the true intent and meaning of these presents, and of the said above proviso.

5. That the mortgagor has a good title in fee simple to the said lands.

5. And also, that the said mortgagor, at the time of the sealing and delivery hereof, is, and stands solely, rightfully and lawfully seized of a good, sure, perfect, absolute and indefeasible estate of inheritance, in fee simple, of and in the lands, tenements, hereditaments and all and singular other the premises hereinbefore described, with their and every of their appurtenances and of and in every part and parcel thereof without any manner of trusts, reservations, limitations, provisoes or conditions, except those contained in the original grant thereof from the Crown or any other matter or thing to alter, charge, change, incumber or defeat the same.

COLUMN ONE.

COLUMN TWO.

6. And that he has the right to convey the said lands to the said mortgagee.

7. And that on default the mortgagee shall have quiet possession of the said lands.

8. Free from all incumbrances.

9. And that the said mortgagor will execute such further assurances of the said lands as may be requisite.

6. And also, that the said mortgagor now hath in himself good right, full power and lawful and absolute authority to convey the said lands, tenements, hereditaments, and all and singular other the premises hereby conveyed or hereinbefore mentioned or intended so to be, with their and every of their appurtenances unto the said mortgagee, his heirs, executors, administrators and assigns, in manner aforesaid, and according to the true intent and meaning of these presents.

7. And also, that from and after default shall happen to be made of or in the payment of the said sum of money, in the said above proviso mentioned, or the interest thereof, or any part thereof, or of or in the doing, observing, performing, fulfilling or keeping of some one or more of the provisions, agreements or stipulations in the said above proviso particularly set forth, contrary to the true intent and meaning of these presents, and of the said proviso, then, and in every such case, it shall and may be lawful to and for the said mortgagee, his heirs, executors, administrators and assigns, peaceably and quietly to enter into, have, hold, use, occupy, possess and enjoy the aforesaid lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be, with their appurtenances, without the let, suit, hindrance, interruption or denial of him the said mortgagor, his heirs, executors, administrators or assigns or any other person or persons whomsoever.

8. And that free and clear and freely and clearly acquitted, exonerated and discharged of and from all arrears of taxes and assessments whatsoever due or payable upon or in respect of the said lands, tenements, hereditaments and premises or any part thereof, and of and from all former conveyances, mortgages, rights, annuities, debts, executions and recognizances, and of and from all manner of other charges or incumbrances whatsoever.

9. And also, that from and after default shall happen to be made of or in the payment of the said sum of money in the said proviso mentioned, or the interest thereof, or any part of such money or interest or of or in the doing, observing, performing, fulfilling or keeping of some one or more of the provisions, agreements or stipulations in the said above proviso particularly set forth, contrary to the true intent and meaning of these presents and of the said proviso, then and in every such case the said mortgagor, his heirs, executors, administrators and assigns and all and every other person or persons whosoever having, or lawfully claiming, or who shall or may have or lawfully claim any estate, right, title, interest or trust of, in, to or out of the lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be,

COLUMN ONE.

COLUMN TWO.

with the appurtenances or any part thereof, by, from, under or in trust for him the said mortgagor, his heirs, executors, administrators, or assigns shall and will, from time to time, and at all times thereafter, at the proper costs and charges of the said mortgagee, his heirs, executors, administrators and assigns, make, do, suffer and execute, or cause or procure to be made, done, suffered and executed, all and every such further and other reasonable act or acts, deed or deeds, devices, conveyances, and assurances in the law for the further better and more perfectly and absolutely conveying and assuring the said lands, tenements, hereditaments and premises, with the appurtenances, unto the said mortgagee, his heirs, executors, administrators and assigns, as by the said mortgagee, his heirs, executors, administrators or assigns, or his or their counsel learned in the law shall or may be lawfully and reasonably devised, advised, or required, but so as no person who shall be required to make or execute such assurances shall be compelled, for the making or executing thereof, to go or travel from his usual place of abode.

10. And that the said mortgagor will produce the title deeds enumerated hereunder, and allow copies to be made at the expense of the mortgagee.

10. And also, that the said mortgagor, his heirs, executors, administrators, and assigns shall and will, unless prevented by fire or inevitable accident, from time to time, and at all times hereafter, at the request and proper costs and charges in the law of the said mortgagee, his heirs, executors, administrators, or assigns at any trial or hearing in any action or otherwise as occasion shall require, produce all, every or any deed, instrument or writing hereunder written for the manifestation, defence and support of the estate, title and possession of the said mortgagee, his heirs, executors, administrators and assigns, of, in, to or out of the said lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be, and at the like request, costs and charges shall and will make and deliver, or cause or procure to be made and delivered, unto the said mortgagee, his heirs, executors, administrators and assigns, true and attested or other copies or abstracts of the same deeds, instruments and writings respectively, or any of them, and shall and will permit and suffer such copies and abstracts to be examined and compared with the said original deeds by the said mortgagee, his heirs, executors, administrators and assigns.

11. And that the said mortgagor has done no act to incumber the said lands.

11. And also that the said mortgagor hath not at any time heretofore made, done, committed, executed or wilfully or knowingly suffered any act, deed, matter or thing whatsoever whereby or by means whereof the said lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be, or any part or parcel thereof, are, is or shall

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or may be in any wise impeached, charged, affected or incumbered in title, estate or otherwise howsoever.

12. And that the said mortgagor will insure the buildings on the said lands to the amount of not less than of lawful money of Canada.

12. And also that the said mortgagor or his heirs, executors, administrators or assigns shall and will forthwith insure unless already insured, and during the continuance of this security keep insured against loss or damage by fire, in such proportions upon each building as may be required by the said mortgagee his heirs, executors, administrators or assigns, the messuages and buildings erected on the said lands, tenements, hereditaments and premises hereby conveyed or mentioned, or intended so to be, in the sum of of lawful money of Canada, at the least, in some insurance office to be approved of by the said mortgagee, his heirs, executors, administrators or assigns, and pay all premiums and sums of money necessary for such purpose, as the same shall become due, and will on demand assign, transfer and deliver over unto the said mortgagee, his heirs, executors, administrators or assigns, the policy or policies of insurance, receipt or receipts thereto appertaining; and if the said mortgagee, his heirs, executors, administrators or assigns, shall pay any premiums or sums of money for insurance of the said premises or any part thereof, the amount of such payment shall be added to the debt hereby secured, and shall bear interest at the same rate from the time of such payments, and shall be payable at the time appointed for the then next ensuing payment of interest on the said debt.

13. And the said mortgagor doth release to the said mortgagee all his claims upon the said lands subject to the said proviso.

13. And the said mortgagor hath released, remised and for ever quitted claim, and by these presents doth release, remise, and for ever quit claim unto the said mortgagee, his heirs, executors, administrators and assigns, all and all manner of right, title, interest, claim and demand whatsoever, of, unto and out of the said lands, tenements, hereditaments and premises hereby conveyed or mentioned, or intended so to be, and every part and parcel thereof, so as that neither the said mortgagor, his heirs, executors, administrators or assigns, shall or may at any time hereafter have, claim, pretend to, challenge or demand the said lands, tenements, hereditaments and premises or any part thereof, in any manner howsoever, subject always to the said above proviso; but the said mortgagee, his heirs, executors, administrators or assigns, and the said lands, tenements, hereditaments and premises, subject as aforesaid, shall from henceforth for ever hereafter be exonerated and discharged of and from all claims and demands whatsoever which the said mortgagor, his heirs, or assigns, might or could have upon the said mortgagee, his heirs, executors, administrators or assigns, in respect of the said lands, tenements, hereditaments and premises, or upon the said lands, tenements, hereditaments and premises.

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14. Provided, that the said mortgagee on default of payment for money or interest or any part of either of the same, according to the true intent and meaning of these presents, and of the proviso in that behalf hereinbefore contained, and shall have thereafter elapsed without such payment being made (of which default, as also of the continuance of the said principal money and interest, or some part thereof, on this security, the production of these presents shall be conclusive evidence), it shall and may be lawful to and for the said mortgagee, his heirs, executors, administrators or assigns, after giving written notice to the said mortgagor, his heirs, executors, administrators or assigns, of his or their intention in that behalf, either personally or at his or their usual or last place of residence within this Province not less than previous, without any further consent or concurrence of the said mortgagor, his heirs, executors, administrators or assigns, to enter into possession of the said lands, tenements, hereditaments and premises hereby conveyed, or mentioned or intended so to be, and to receive and take the rents, issues and profits thereof, and whether in or out of possession of the same, to make any lease or leases thereof, or of any part thereof as he or they shall think fit, and also to sell and absolutely dispose of the said lands, tenements, hereditaments and premises hereby conveyed or mentioned, or intended so to be, or any part or parts thereof, with the appurtenances, by public auction or private contract, or partly by public auction and partly by private contract, as to him or them shall seem meet, and to convey and assure the same when so sold unto the purchaser or purchasers thereof, his or their heirs, or assigns, or as he or they shall direct and appoint and to execute and do all such assurances, acts, matters and things as may be found necessary for the purposes aforesaid, and the said mortgagee, his heirs, executors, administrators or assigns shall not be responsible for any loss which may arise by reason of any such leasing or sale as aforesaid unless the same shall happen by reason of his or their wilful neglect or default; and it is hereby further agreed between the parties to these presents, that, until such sale or sales shall be made as aforesaid, the said mortgagee, his heirs, executors, administrators, or assigns shall and will stand and be possessed of and interested in the rents and profits of the said lands, tenements, hereditaments and premises, in case he or they shall take possession of the same on any default as aforesaid, and after such sale or sales shall stand and be possessed of and interested in the moneys to arise and be produced by such sale

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or sales, or which shall be received by the mortgagee, his heirs, executors, administrators or assigns, by reason of any insurance upon the said premises or any part thereof, upon trust in the first place to pay and satisfy the costs and charges of preparing for and making sales, leases and conveyances as aforesaid, and all other costs and charges, damages and expenses which the said mortgagee, his heirs, executors, administrators or assigns, shall bear, sustain, or be put to for taxes, rents, insurances and repairs, and all other costs and charges which may be incurred in and about the execution of any of the trusts in him or them hereby reposed, and in the next place to pay and satisfy the principal sum of money and interest hereby secured or mentioned or intended so to be or so much thereof as shall remain due and unsatisfied up to and inclusive of the day whereon the said principal sum shall be paid and satisfied; and after full payment and satisfaction of all such sums of money and interest as aforesaid upon this further trust that the said mortgagee, his heirs, executors, administrators or assigns, do and shall pay the surplus, if any, to the said mortgagor, his heirs, executors, administrators or assigns, or as he or they shall direct and appoint, and shall also, in such event, at the request, costs and charges in the law of the said mortgagor, his heirs, executors, administrators or assigns, convey and assure unto the said mortgagor, his heirs, executors, administrators or assigns, or to such person or persons as he or they shall direct and appoint, all such parts of the said lands, tenements, hereditaments and premises as shall remain unsold for the purposes aforesaid, freed and absolutely discharged of and from all estate, lien, charge and incumbrance whatsoever by the said mortgagee, his heirs, executors, administrators or assigns, in the meantime, but so as no person who shall be required to make or execute any such assurances, shall be compelled for the making thereof to go or travel from his usual place of abode: Provided always, and it is hereby further declared and agreed by and between the parties to these presents, that notwithstanding the power of sale and other the powers and provisions contained in these presents, the said mortgagee, his heirs, executors, administrators or assigns, shall have and be entitled to his right of foreclosure of the equity of redemption of the said mortgagor, his heirs, executors, administrators and assigns in the said lands, tenements, hereditaments and premises as fully and effectually as he or they might have exercised and enjoyed the same in case the power of sale, and the other former provisoes and trusts incident thereto had not been herein contained.

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15. Provided, that the mortgagee may distrain for arrears of interest, and it is further covenanted, declared and agreed by and between the parties to these presents, that if the said mortgagor, his heirs, executors, or administrators, shall make default in payment of any part of the said interest at any of the days or times hereinbefore limited for the payment thereof, it shall and may be lawful for the said mortgagee, his heirs, executors, administrators or assigns, to distrain therefor upon the said lands, tenements, hereditaments and premises, or any part thereof, and by distress warrant, to recover by way of rent reserved, as in the case of a demise, of the said lands, tenements, hereditaments and premises, so much of such interest as shall, from time to time, be, or remain in arrear and unpaid, together with all costs, charges and expenses attending such levy or distress, as in like cases of distress for rent.

16. Provided that in default of the payment of the interest hereby secured, the principal hereby secured shall become payable. 16. Provided always, and it is hereby further expressly declared and agreed by and between the parties to these presents, that if any default shall at any time happen to be made of or in the payment of the interest money hereby secured or mentioned or intended so to be, or any part thereof, then and in such case the principal money hereby secured or mentioned, or intended so to be, and every part thereof, shall forthwith become due and payable in like manner and with the like consequences and effects to all intents and purposes whatsoever, as if the time herein mentioned for payment of such principal money had fully come and expired, but that in such case the said mortgagor, his heirs, executors, administrators or assigns, shall on payment of all arrears under these presents, with lawful costs and charges in that behalf, at any time before any judgment in the premises recovered or within such time as, by the practice of the Supreme Court, relief therein could be obtained be relieved from the consequences of non-payment of so much of the money secured by these presents, or mentioned, or intended so to be, as may not then have become payable by reason of lapse of time.

17. Provided that until default of payment the mortgagor shall have quiet possession of the said lands. 17. And provided also, and it is hereby further expressly declared and agreed by and between the parties to these presents, that until default shall happen to be made of or in the payment of the said sum of money hereby secured or mentioned, or intended so to be, or the interest thereof, or any part of either of the same, or the doing, observing, performing, fulfilling or keeping some one or more of the provisions, agreements or stipulations herein set forth, contrary to the true intent and meaning of these presents, it shall and may be lawful to and for the said mortgagor his heirs, executors, administrators and assigns, peaceably and quietly to have, hold, use, occupy,

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possess and enjoy the said lands, tenements, hereditaments, and premises hereby conveyed or mentioned, or intended so to be, with their and every of their appurtenances, and receive and take the rents, issues and profits thereof to his and their own use and benefit, without let, suit, hindrance, interruption, or denial of or by the said mortgagee, his heirs, executors, administrators or assigns, or of or by any other person or persons whomsoever lawfully claiming, or who shall, or may lawfully claim by, from, under or in trust for him, her, them or any or either of them.

R.S.O. 1914, c. 117, Sched. "B," *part*

CHAPTER 146.

The Accidental Fires Act.

1. No action shall be brought against any person in whose house or building or on whose land any fire shall accidentally begin, nor shall any recompense be made by him for any damage suffered thereby; but no contract or agreement made between landlord and tenant shall be hereby defeated or made void. No action for damages from accidental fire. Imp. Act, 14 Geo. III. c. 78, s. 86. R.S.O. 1914, c. 118, s. 2.

CHAPTER 147.

The Industrial and Mining Lands Compensation Act.

Agreement
for com-
pensation.

1. It shall be lawful for any owner or operator of a mine, industry or factory or works in connection therewith, or any person contemplating acquiring or operating a mine, factory, industry or works, to make an agreement with the owner or lessee of any land for payment to the owner or lessee of the land of compensation for any damage or injury resulting or likely to result to the land or to its use and enjoyment from the operation of the mine, industry, factory or works in connection therewith. 1918, c. 11, s. 2.

Effect and
extent of
operation of
agreement.

2. Such agreement shall, if so expressed therein, bind and enure to the benefit of the heirs, executors, administrators and assigns, or the successors and assigns of the parties thereto, and may relate not only to a mine, industry, factory or works in connection therewith then in operation, but may also relate to any mine, industry, factory or works in connection therewith which may thereafter be established by the party paying the compensation, within a specified area, even though the land upon which the mine, industry, factory or works in connection therewith is thereafter operated is not at the time owned or leased by the party making the compensation. 1918, c. 11, s. 3.

Registra-
tion of
agreement.
Rev. Stat.
c. 158.

3. Where the land in respect of which the agreement is made is not under *The Land Titles Act*, the agreement shall be registered; and where such land is under *The Land Titles Act*, an original of the agreement, with proof of the due execution thereof, shall be lodged with the proper master of titles, who shall enter shortly the particulars thereof in the register of the title of the parcel of land on which the burden is imposed, with a note referring to this enactment. Any subsequent agreement cancelling any agreement so registered or lodged, shall in like manner be registered or lodged as the case may be. 1918, c. 11, s. 4, *part*.

Payment of
compen-
sation to
be an
answer to
action.

4. The payment of compensation under such agreement shall afford a complete answer to any action which may be brought for damages or for an injunction in respect of any matter for which compensation has been made. 1918, c. 11, s. 5.

2. *INTESTATE SUCCESSION.*

CHAPTER 148.

The Devolution of Estates Act.

INTERPRETATION.

1. In this Act,

- (a) "Lunatic" shall include an idiot and a person of "Lunatic." unsound mind.
- (b) "Personal representative" shall mean and include "Personal representative." an executor, an administrator, and an administrator with the will annexed. R.S.O. 1914, c. 119, s. 2.

2.—(1) All real and personal property which is vested in any person without a right in any other person to take by survivorship shall, on his death, whether testate or intestate, and notwithstanding any testamentary disposition, devolve to and become vested in his personal representative from time to time as trustee for the persons by law beneficially entitled thereto and, subject to the payment of his debts, and so far as such property is not disposed of by deed, will, contract or other effectual disposition, the same shall be administered, dealt with and distributed as if it were personal property not so disposed of.

Devolution to personal representative of deceased.

Imp. Act 60 and 61 V. c. 65, s. 1.

(2) This section shall apply to property over which a person executes by will a general power of appointment as if it were property vested in him.

Idem where under appointment.

(3) This section shall not apply to estates tail or to the personal property, except chattels real, of any person who, at the time of his death, is domiciled out of Ontario. R.S.O. 1914, c. 119, s. 3.

Exceptions.

Administration of Real Property.

3. The enactments and rules of law relating to the effect of probate or letters of administration as respects personal property and as respects the dealings with personal property before probate or administration and as respects the payment of costs of administration and other matters in rela-

Application of enactments as to probate, etc.

Imp. Act 60 and 61 V. c. 65 s. 2 (2).

Exception.

tion to the administration of personal estate and the powers, rights, duties and liabilities of personal representatives in respect of personal estate shall apply to real property vesting in them, so far as the same are applicable as if that real property were personal property, save that it shall not be lawful for some or one only of several joint personal representatives without the authority of the Supreme Court or a judge thereof to sell or transfer real property. R.S.O. 1914, c. 119, s. 4.

Real and personal property assimilated in matters of administration.

Imp. Act 60 and 61 V. c. 65, s. 2 (3).

4. Subject to the other provisions of this Act, in the administration of the assets of a deceased person, his real property shall be administered in the same manner, subject to the same liability for debts, costs and expenses and with the same incidents as if it were personal property, but nothing in this section shall alter or affect as respects real or personal property of which the deceased has made a testamentary disposition the order in which real and personal assets are now applicable to the payment of funeral and testamentary expenses, the costs and expenses of administration, debts or legacies, or the liability of real property to be charged with the payment of legacies. R.S.O. 1914, c. 119, s. 5.

Payment of Debts out of Residue.

Payment of debts out of residuary estate.

Rev. Stat. c. 149

5. Subject to the provisions of section 37 of *The Wills Act* the real and personal property of a deceased person comprised in any residuary devise or bequest shall, except so far as a contrary intention appears from his will or any codicil thereto, be applicable rateably, according to their respective values, to the payment of his debts, funeral and testamentary expenses and the cost and expenses of administration. R.S.O. 1914, c. 119, s. 6.

How far personal representatives to be deemed "heirs."

6. When any part of the real property of a deceased person vests in his personal representative under this Act such personal representative, in the interpretation of any Act of this Legislature, or in the construction of any instrument to which the deceased was a party, or under which he is interested, shall, while the estate remains in him, be deemed in law his heir, as respects such part, unless a contrary intention appears; but nothing in this section shall affect the beneficial right to any property, or the construction of words of limitation of any estate in or by any deed, will or other instrument. R.S.O. 1914, c. 119, s. 7.

Mortgages, Trust Estates and Dower.

Trust estates and interests of mortgagees.

Imp. Act 44 and 45 V. c. 41, s. 30.

7. Where an estate or interest of inheritance in real property is vested on any trust or by way of mortgage in any person solely the same shall on his death, notwithstanding any testamentary disposition, devolve to and become vested in his executor or administrator in like manner as

if the same were personal estate vesting in him and, accordingly, all the like powers for one only of several joint executors or administrators as well as for a single executor or administrator and for all the executors and administrators together to dispose of and otherwise deal with the same shall belong to the deceased's executor or administrator with all the like incidents but subject to all the like rights, equities and obligations as if the same were personal estate vesting in him, and for the purposes of this section the executor or administrator of the deceased shall be deemed in law his heirs and assigns within the meaning of all trusts and powers. R.S.O. 1914, c. 119, s. 8.

8.—(1) Nothing in this Act shall take away a widow's right to dower; but a widow may by deed or instrument in writing, attested by at least one witness, elect to take her interest under this Act in her husband's undisposed of real property in lieu of all claim to dower in respect of the real property of which her husband was at any time seised, or to which at the time of his death he was beneficially entitled; and unless she so elects she shall not be entitled to share in the undisposed of real property. Saving as to dower and right of election.

(2) The personal representative of the deceased may, by notice in writing, require his widow to make her election, and if she fails to execute and deliver a deed or instrument of election to him within six months after the service of the notice she shall be deemed to have elected to take her dower. Idem.

(3) Where the widow is an infant or a lunatic the right of election may be exercised on her behalf by the Official Guardian, with the approval of a judge of the Supreme Court or by some person authorized by a judge of the Supreme Court to exercise it; and the Official Guardian or the person so authorized may, for and in the name of the widow, give all notices and do all acts necessary or incidental to the exercise of such right. Where widow under disability. R.S.O. 1914, c. 119, s. 9.

9.—(1) Where there is no legal personal representative of a deceased mortgagor of freehold property it shall be sufficient, for the purposes of an action, for the foreclosure of the equity of redemption in, or for the sale of, such property that the person beneficially entitled under the last will and testament, if any, of the deceased mortgagor, or under the provisions of this Act, to such property or the proceeds thereof be made defendant to such action, and it shall not be necessary that a legal personal representative of the deceased mortgagor be appointed or be made a defendant thereto unless it shall be otherwise ordered by the court in which the action is brought or by a judge thereof; but if, during the pendency of such action, the equity of redemption devolves upon and becomes vested in a legal personal representative of the mortgagor he shall be made a party to the action. Who to be defendants in action for foreclosure where no personal representative of mortgagor.

“Mortgagor”
meaning of

(2) In subsection 1 the word “mortgagor” shall include the assignee of a mortgagor and any person entitled to or interested in the equity of redemption. R.S.O. 1914, c. 119, s. 10.

Application
for order
allowing sale
free of dower
or curtesy.

10.—(1) Where the personal representative desires to sell any real property devolving upon him free from curtesy or dower he may apply to a judge of the Supreme Court, who may, in a summary way, and upon notice, to be served personally unless the judge otherwise directs, order that the same shall be sold free from the right of the tenant by the curtesy or dowress; and in making such order regard shall be had to the interests of all parties.

Effect.

(2) If a sale free from such curtesy or dower is ordered all the right and interest of such tenant by the curtesy or dowress shall pass thereby; and no conveyance, or release thereof to the purchaser shall be required; and the purchaser, his heirs and assigns, shall hold the real property freed and discharged from the estate or interest of such tenant by the curtesy or dowress.

Payment in
satisfaction of
dower or
curtesy.

(3) The judge may direct the payment of such sum in gross out of the purchase money to the person entitled to curtesy or dower as he may deem, upon the principles applicable to life annuities, a reasonable satisfaction for such estate or interest; or may direct the payment to the person entitled of an annual sum, or of the income or interest to be derived from the purchase money or any part thereof, as he may deem just, and for that purpose may make such order for the investment or other disposition of the purchase money or any part thereof as he may deem necessary. R.S.O. 1914, c. 119, s. 11.

Widow's
preferential
share where
estate does
not exceed
\$1,000.

11.—(1) The real and personal property of every man dying intestate and leaving a widow but no issue shall, where the net value of such real and personal property does not exceed \$1,000, belong to his widow absolutely and exclusively.

Where estate
exceeds
\$1,000.

(2) Where the net value exceeds \$1,000 the widow shall be entitled to \$1,000 part thereof, absolutely and exclusively, and shall have charge thereon for such sum with interest thereon from the date of the death of the intestate at four per centum per annum until payment.

Widow's share
in remainder
of estate.

(3) The provision for the widow made by this section shall be in addition and without prejudice to her interest and share in the residue of the real and personal property of the intestate remaining after payment of such sum of \$1,000 and interest in the same way as if such residue had been the whole of the intestate's real and personal property, and this section had not been enacted.

(4) Where the estate consists in whole or in part of real property this section shall apply only if the widow elects under section 8 to take an interest in her husband's undisposed of real property in lieu of dower. Where estate consists of real property.

(5) In this section "net value" shall mean the value of the real and personal property after payment of the charges thereon and the debts, funeral expenses and expenses of administration, including succession duty. R.S.O. 1914, c. 119, s. 12. "Net value" meaning of.

VESTING OF ESTATE AND CAUTIONS.

12.—(1) Real property not disposed of, conveyed to, divided or distributed among the persons beneficially entitled thereto, under the provisions of section 20, by the personal representative within three years after the death of the deceased shall, subject to *The Land Titles Act* in the case of land registered under that Act, and subject as hereinafter provided, at the expiration of that period, whether probate or letters of administration have or have not been taken, be thenceforward vested in the persons beneficially entitled thereto under the will or upon the intestacy or their assigns without any conveyance by the personal representative unless such personal representative, if any, has registered, in the proper registry or land titles office, a caution, Form 1, under his hand, and if such caution is so registered such real property or the part thereof mentioned therein shall not be so vested for twelve months from the time of registration of such caution or of the last caution if more than one are registered. R.S.O. 1914, c. 119, s. 13 (1); 1918, c. 20, s. 22. Vesting of real estate not disposed of within three years. Rev. Stat. c. 158. Unless caution registered.

(2) The execution of every caution shall be verified by the affidavit of a subscribing witness in the manner prescribed by *The Registry Act*, or *The Land Titles Act*, as the case may be. Verification. Rev. Stat. cc 155, 158.

(3) Where the caution specifies certain parcels of land it shall be effectual as to those parcels only. Effect.

(4) The personal representative, before the expiration of the twelve months, may register a certificate, Form 2, withdrawing the caution; or withdrawing the same as to any parcel of land specified in such certificate and, upon registration of the certificate, the property or the parcel specified shall be treated as if the caution had expired. Withdrawal of caution.

(5) The certificate of withdrawal shall be verified by an affidavit of a subscribing witness, Form 3. Verification.

(6) Before a caution expires it may be re-registered, and so on from time to time as long as the personal representative deems it necessary, and every caution shall continue in force for twelve months from the time of its registration or re-registration. R.S.O. 1914, c. 119, s. 13 (2-6). Renewal of caution.

Rev. Stat.
c. 26.

(7) Notwithstanding anything contained in subsection 1 hereof, real property, devolving by reason of any will which has not been proved or registered or by reason of any intestacy in respect of which letters of administration have not been granted, shall not vest at the expiration of three years after the death of the deceased in the persons beneficially entitled thereto under such will or intestacy or their assigns as in that subsection provided unless and until a statement similar to that required by section 12 of *The Succession Duty Act* has been filed either with the Treasurer of Ontario or with the Registrar of the Surrogate Court of the county or district where the deceased had his fixed place of abode or where such real property or part thereof is situate, and, unless with the consent in writing of the Treasurer of Ontario or of some one authorized by him to consent, no deed, conveyance, assignment or other document or instrument purporting to convey, transfer or assign such real property shall be registered with the Registrar of Deeds or Officer of Land Titles of the county or district where such real property or part thereof is situate, unless accompanied by a certificate of the Registrar of the Surrogate Court of the county or district where the deceased had his fixed place of abode, or where such real property or part thereof is situate, showing that a statement similar to that required by section 12 of *The Succession Duty Act* has been filed with him, and such certificate shall be deposited with the Registrar of Deeds or Officer of Land Titles. 1919, c. 28, s. 2.

Rev. Stat.
c. 26.

Ordinary
rights of
executors, etc.,
preserved.

Rev. Stat.
c. 150.

13. Nothing in section 12 shall derogate from any right possessed by an executor or administrator with the will annexed under a will or under *The Trustee Act* or from any right possessed by a trustee under a will. R.S.O. 1914, c. 119, s. 14.

Registration
of caution
after three
years from
death of
testator.

14.—(1) Where a personal representative has not registered a caution within the proper time after the death of the deceased, or has not re-registered a caution within the proper time, he may register or re-register the caution, as the case may be, provided he registers therewith

(a) the affidavit of execution;

(b) a further affidavit stating that he finds or believes that it is or may be necessary for him to sell the real property of the deceased or the part thereof mentioned in the caution, under his powers and in fulfilment of his duties; and as far as they are known to him, the names of all persons beneficially interested in the real property, and whether any, and if so which of them, are infants or lunatics;

- (c) the consent in writing of every adult and of the Official Guardian on behalf of every infant and lunatic whose property or interest would be affected; and an affidavit verifying such consent; or
- (d) in the absence and in lieu of such consent an order of a judge of the Supreme Court or of the county or district court of the county or district wherein the property or some part thereof is situate, or the certificate of the Official Guardian authorizing the caution to be registered, or re-registered, which order or certificate the judge or Official Guardian may make with or without notice on such evidence as satisfies him of the propriety of permitting the caution to be registered or re-registered; and the order or certificate to be registered shall not require verification and shall not be rendered null by any defect of form or otherwise.

(2) This section shall extend to cases where a grant of probate of the will or of administration to the estate of the deceased may not have been made within the period after the death of the testator or intestate within which a caution is required to be registered. Application of this section.

(3) Where a caution is registered or re-registered, under the authority of this section, it shall have the same effect as a caution registered within the proper time after the death of the deceased and of vesting or re-vesting, as the case may be, the real property of the deceased in his personal representative, save as to persons who in the meantime have acquired rights for valuable consideration from or through any person beneficially entitled; and save also and subject to any equities of any non-consenting person beneficially entitled, or person claiming under him, for improvements made after the time within which the personal representative might, without any consent, order or certificate, have registered or re-registered a caution, if his real property is afterwards sold by the personal representative. Effect of such registration.

(4) Where there are two or more personal representatives it shall be sufficient if any caution or the affidavit mentioned in clause b of subsection 1 is signed or made by one of such personal representatives. R.S.O. 1914, c. 119, s. 15. Signature to caution.

15. Where a caution has been registered or re-registered under the authority of any enactment repealed and not re-enacted by this Act and is still in force, such caution shall have the same effect as if such enactment had not been repealed and may be registered in the manner provided by section 12. R.S.O. 1914, c. 119, s. 16. Effect of repealing enactment.

Vacating
caution.

16. Any person beneficially entitled to any real property affected by the registration or re-registration of a caution may apply to a judge of the Supreme Court to vacate such registration or re-registration, and the judge, if satisfied that the vesting of any such real property in such person or of any property of the deceased in any other of the persons beneficially entitled ought not to be delayed, may order that such registration or re-registration be vacated as to such property; and every caution, the registration or re-registration of which is so vacated, shall thereafter cease to operate. R.S.O. 1914, c. 119, s. 17.

Land vesting
in two or
more persons.

17. Where real property becomes vested under this Act in two or more persons beneficially entitled under this Act, they shall take as tenants in common in proportion to their respective rights, unless in the case of a devise they take otherwise under the provisions of the will of the deceased. R.S.O. 1914, c. 119, s. 18.

POWERS OF PERSONAL REPRESENTATIVE.

Sales where
infants inter-
ested.

18.—(1) Where an infant is interested in real property which but for this Act would not devolve on the personal representative, no sale or conveyance shall be valid under this Act without the written approval of the Official Guardian appointed under *The Judicature Act*, or, in the absence of such consent or approval, without an order of a judge of the Supreme Court.

Rev. Stat.
c. 88.

Local guar-
dians in outer
counties.

(2) The Supreme Court may appoint the local judge of any county or district or the local master therein, as local guardian of infants, in such county or district during the pleasure of the Court, with authority to give such written approval instead of the Official Guardian; and the Official Guardian and local guardian shall be subject to such rules as the Supreme Court may make in regard to their authority and duties under this Act. R.S.O. 1914, c. 119, s. 19.

Power of
personal repre-
sentative over
real property.

19. Except as herein otherwise provided the personal representative of a deceased person shall have power to dispose of and otherwise deal with the real property vested in him by virtue of this Act, with the like incidents, but subject to the like rights, equities, and obligations, as if the same were personal property vested in him. R.S.O. 1914, c. 119, s. 20.

Powers of
executors and
administrators
as to selling
and conveying
real estate.

20.—(1) The powers of sale conferred by this Act on a personal representative may be exercised for the purpose not only of paying debts, but also of distributing or dividing the estate among the persons beneficially entitled thereto, whether there are or are not debts, and in no case shall it be

necessary that the persons beneficially entitled shall concur in any such sale except where it is made for the purpose of distribution only.

(2) No sale of any such real property made for the purpose of distribution only shall be valid as respects any person beneficially entitled thereto unless he concurs therein; but where a lunatic is beneficially entitled or where there are other persons beneficially entitled whose consent to the sale is not obtained by reason of their place of residence being unknown or where in the opinion of the Official Guardian it would be inconvenient to require the concurrence of such persons, he may, upon proof satisfactory to him that such sale is in the interest and to the advantage of the estate of such deceased person and the persons beneficially interested therein, approve such sale on behalf of such lunatic and non-concurring persons, and any such sale made with the written approval of the Official Guardian shall be valid and binding upon such lunatic and non-concurring persons; and for this purpose the Official Guardian shall have the same powers and duties as he has in the case of infants; and provided also that in any case the Supreme Court or a judge thereof may dispense with the concurrence of the persons beneficially entitled or any or either of them.

Concurrence of heirs and devisees.

Proviso as to lunatics and non-concurring heirs and devisees.

(3) The personal representative shall also have power, with the concurrence of the adult persons beneficially entitled thereto, and with the written approval of the Official Guardian on behalf of infants or lunatics, if any, so entitled, to convey, divide or distribute the estate of the deceased person or any part thereof among the persons beneficially entitled thereto according to their respective shares and interests therein.

Powers of executors and administrators as to dividing estate among persons entitled.

(4) Upon the application of the personal representative or of any person beneficially entitled the Supreme Court or a judge thereof may before the expiration of three years from the death of the deceased, direct the personal representative to divide or distribute the estate or any part thereof to or among the persons beneficially entitled according to their respective rights and interests therein.

Distribution by order of Court within three years from death.

(5) The power of division conferred by subsection 3 may also be exercised, although all the persons beneficially interested do not concur, with the written approval of the Official Guardian, which may be given under the same conditions and with the like effect as in the case of a sale under subsection 2. R.S.O. 1914, c. 119, s. 21 (1-5).

Exercise of power of division without concurrence.

(6) Where the Public Trustee is the statutory committee under the provisions of *The Hospitals for the Insane Act* of a lunatic beneficially entitled, it shall be the duty of the Official Guardian to notify the Public Trustee of any sale to which he has consented and he may, by leave of the Supreme Court

Where lunatic beneficially entitled.

Rev. Stat. c. 353.

or a judge thereof, pay to the Public Trustee the share of such lunatic or such part thereof as the Court or judge may direct. R.S.O. 1914, c. 119, s. 21 (6); 1921, c. 47, s. 6.

Sections 19
and 20
not to
apply to
administrators
of personal
estate only.

Provisions as
to executor
who has not
obtained
probate.

(7) Section 19 and this section shall not apply to an administrator where the letters of administration are limited to the personal property, exclusive of the real property, and shall not derogate from any right possessed by a personal representative independently of this Act, but an executor shall not exercise the powers conferred by this section until he has obtained probate of the will unless with the approval of the Supreme Court or a judge thereof. R.S.O. 1914, c. 119, s. 21 (7).

Conveyance
by personal
representa-
tive without
an order.

(8) The powers of a personal representative under subsections 2, 3 or 5 have heretofore been and shall hereafter be exercisable during the period of three years from the death of the deceased without an order of the Supreme Court or a judge thereof, provided, however, that,—

Subject to
payment of
debts.

(a) real property conveyed by virtue of any of such powers shall be deemed to have been and to be liable for the payment of the debts of the deceased owner as if no conveyance had been made, and upon the expiry of such period, such liability shall continue if some action or legal proceeding has been instituted by the creditor, his assignee or successor, to enforce the claim and a *lis pendens* or a caution has, before such expiry, been registered against the property, and that,

Purchaser
for value
has relief
over.

(b) although such liability has applied and shall apply in respect of real property so conveyed to a purchaser in good faith and for value, he shall be deemed to have had and to have a right to relief over against the person beneficially entitled, and where the conveyance was made by the personal representative with knowledge of the debt in respect of which claim is made, or without due advertisement, then against such personal representative, and that,

Where no
lis pendens
or caution.

(c) upon the expiration of such three-year period where no *lis pendens* has been registered, the provisions of subsection 2 of section 23 and of section 25 shall apply. 1927, c. 35, s. 2.

Effect of
accepting
share of pur-
chase money.

21. The acceptance by an adult of his share of the purchase money in the case of a sale by a personal representative which has been made without the written approval of the Official Guardian, where such approval is required, shall be a confirmation of the sale as to him. R.S.O. 1914, c. 119, s. 22.

22. A person purchasing in good faith and for value real property from the personal representative in manner authorized by this Act shall be entitled to hold the same freed and discharged from any debts or liabilities of the deceased owner, except such as are specifically charged thereon otherwise than by his will, and from all claims of the persons beneficially entitled thereto, and shall not be bound to see to the application of the purchase money. R.S.O. 1914, c. 119, s. 23.

Protection of
bona fide pur-
chasers from
personal re-
presentatives.

23.—(1) A person purchasing real property in good faith and for value from a person beneficially entitled, to whom it has been conveyed by the personal representative, by leave of the Supreme Court or a judge thereof, shall be entitled to hold the same freed and discharged from any debts and liabilities of the deceased owner, except such as are specifically charged thereon otherwise than by his will; but nothing in this section shall affect the rights of creditors as against the personal representative personally, or as against any person beneficially entitled to whom real property of a deceased owner has been conveyed by the personal representative.

Protection of
bona fide pur-
chasers from
beneficiary.

(2) Real property which becomes vested in the person beneficially entitled thereto, under section 12, shall continue to be liable to answer the debts of the deceased owner so long as it remains vested in such person, or in any person claiming under him, not being a purchaser in good faith and for valuable consideration, as it would have been if it had remained vested in the personal representative, and in the event of a sale thereof in good faith and for value by such person beneficially entitled he shall be personally liable for such debts to the extent of the proceeds of such real property. R.S.O. 1914, c. 119, s. 24.

Extent to
which real
property
remains liable
to debts and
personal
liability of
beneficiary.

24.—(1) The powers of a personal representative under this Act shall include

Powers of
personal
representative
as to leasing
and mort-
gaging.

(a) power to lease from year to year while the real property remains vested in him;

(b) power with the approval of the Supreme Court or a judge thereof to lease for a longer term;

(c) power to mortgage for the payment of debts.

(2) The written approval of the Official Guardian to mortgaging shall be required where it would be required if the real property were being sold. R.S.O. 1914, c. 119, s. 25.

Approval of
Official
Guardian.

25.—(1) A purchaser in good faith and for value of real property of a deceased owner which has become vested under the provisions of section 12 in a person beneficially entitled thereto, shall be entitled to hold it freed and discharged from

Rights of
purchaser in
good faith
against claims
of creditors.

the claims of creditors of the deceased owner except such of them of which he had notice at the time of his purchase.

Liability of
personal
representa-
tive.

(2) Nothing in subsection 1 shall affect the right of the creditor against the personal representative personally where he has permitted the real property to become vested in the person beneficially entitled to the prejudice of the creditor or against the person beneficially entitled. R.S.O. 1914, c. 119, s. 26.

DISTRIBUTION OF ESTATE.

Effect of
illegitimacy.

26. An illegitimate child or relative shall not share under any of the provisions of this Act. R.S.O. 1914, c. 119, s. 27 (1).

Rev. Stat.
c. 187.

NOTE.—*See Legitimation Act.*

Advancement.

Cases of chil-
dren who have
been advanced
by settlement,
etc.

27.—(1) If any child of an intestate has been advanced by him by settlement or portion of real or personal property or both, and the same has been so expressed by the intestate in writing, or so acknowledged in writing by the child, the value thereof shall be reckoned, for the purposes of this section only, as part of the real and personal property of such intestate to be distributed under the provisions of this Act; and if such advancement is equal to or greater than the amount of the share which such child would be entitled to receive of the real and personal property of the deceased, as so reckoned, then such child and his descendants shall be excluded from any share in the real and personal property of the intestate.

If such ad-
vancement be
not equal.

(2) If such advancement is less than such share such child and his descendants shall be entitled to so much only of the real and personal property as is sufficient to make all the shares of the children in such real and personal property and advancement to be equal, as nearly as can be estimated.

Value of
property
advanced, how
estimated.

(3) The value of any real or personal property so advanced shall be deemed to be that, if any, which has been acknowledged by the child by an instrument in writing; otherwise such value shall be estimated according to the value of the property when given.

Education,
etc., not ad-
vancement.

(4) The maintaining or educating, or the giving of money to a child without a view to a portion or settlement in life shall not be deemed an advancement within the meaning of this Act. R.S.O. 1914, c. 119, s. 28.

Intestate Married Women.

28.—(1) The real and personal property, whether separate or otherwise, of a married woman in respect of which she dies intestate, shall be distributed as follows: One-third to her husband if she leaves issue, and one-half if she leaves no issue, and subject thereto shall devolve as if her husband had predeceased her.

Distribution of property of married woman dying intestate.

(2) A husband who, if this Act had not been passed, would be entitled to an interest as tenant by the curtesy in real property of his wife, may, by deed or instrument in writing executed, and attested by at least one witness, and delivered to the personal representative, if any, or if there is none, deposited in the office of the Surrogate Clerk at Toronto, within six months after his wife's death, elect to take such interest in the real and personal property of his wife as he would have taken if this Act had not been passed, in which case the husband's interest therein shall be ascertained in all respects as if this Act had not been passed, and he shall be entitled to no further interest thereunder. R.S.O. 1914, c. 119, s. 29.

Saving as to husband's interest in property of wife.

Distribution of Personalty.

29. Except as in this Act is otherwise provided the personal property of a person dying intestate shall be distributed as follows, that is to say: one-third to the wife of the intestate and all the residue by equal portions among the children of the intestate and such persons as legally represent such children in case any of them have died in his lifetime, and if there are no children or any legal representatives of them then one-half of the personal property shall be allotted to the wife, and the residue thereof shall be distributed equally to every of the next of kindred of the intestate who are of equal degree and those who legally represent them, and for the purpose of this section the father and the mother and the brothers and sisters of the intestate shall be deemed of equal degree; but there shall be no representations admitted among collaterals after brothers' and sisters' children, and if there is no wife then all such personal property shall be distributed equally among the children, and if there is no child then to the next of kindred in equal degree of or unto the intestate and their legal representatives and in no other manner. R.S.O. 1914, c. 119, s. 30.

Distribution of personal estate.

30. If, after the death of a father, any of his children die intestate without wife or children in the lifetime of the mother, every brother and sister and the representatives of them shall have an equal share with her, anything in section 29 to the contrary notwithstanding. R.S.O. 1914, c. 119, s. 31.

Children share with mother.

Distribution
not to be made
for one year.
Rev. Stat.
c. 150.

31. Subject to the provisions of section 51 of *The Trustee Act*, no such distribution shall be made until after one year from the death of the intestate, and every person to whom in distribution a share shall be allotted shall, if any debt owing by the intestate shall be afterwards sued for and recovered or otherwise duly made to appear, refund and pay back to the personal representative his rateable part of that debt and of the costs of suit and charges of the personal representative by reason of such debt out of the part or share so allotted to him, thereby to enable the personal representative to pay and satisfy such debt, and shall give bond with sufficient sureties that he will do so. R.S.O. 1914, c. 119, s. 32.

GENERAL PROVISIONS.

Rules of
procedure.

32. Rules regulating the practice and procedure to be followed in all proceedings under this Act, and, a tariff of fees to be allowed and paid to solicitors for services rendered in such proceedings, may be made under the provisions of *The Judicature Act*. 1926, c. 38, s. 3.

Rev. Stat.
c. 88.

Appointment
of Deputy
Official Guar-
dian pro tem.

33. The Lieutenant-Governor in Council may appoint a Deputy *pro tempore* of the Official Guardian for the purposes of this Act who shall have all the powers of the Official Guardian for such purposes. R.S.O. 1914, c. 119, s. 33 (3).

Affidavits.

34. Affidavits may be used in proceedings taken under this Act. R.S.O. 1914, c. 119, s. 34.

FORM 1.

(Section 12.)

THE DEVOLUTION OF ESTATES ACT.

I, _____, executor of (or administrator, with the will annexed of, or administrator of) _____, who died on or about the _____ day _____ 19____, certify that it may be necessary for me under my powers and in fulfilment of my duty as executor (or administrator) to sell the real property of the said _____ or part thereof (or the caution may specify any particular part or parcel) and of this all persons concerned are hereby required to take notice.

R.S.O. 1914, c. 119, Form 1.

FORM 2.

(Section 12.)

THE DEVOLUTION OF ESTATES ACT.

I, _____, executor (or *administrator*) of
hereby withdraw the caution heretofore registered with
respect to the real property of _____
(*or as the case may be*).

R.S.O. 1914, c. 119, Form 2.

FORM 3.

(Section 12.)

THE DEVOLUTION OF ESTATES ACT.

I, _____, of, etc., make oath and say I am well
acquainted with _____ named in the above certificate;
that I was present and did see the said certificate signed by the
said _____; that I am a subscribing witness to the said
certificate and I believe the said _____ is the person who regis-
tered the caution referred to in the said certificate.
Sworn, etc.

R.S.O. 1914, c. 119, Form 3.

3. *WILLS, EXECUTORS AND TRUSTEES.*

CHAPTER 149.

The Wills Act.

INTERPRETATION.

1. In this Act,

"Land."

- (a) "Land" shall include messuages, and all other hereditaments, whether corporeal or incorporeal, chattels and other personal property transmissible to heirs, money to be paid out in the purchase of land, and any share of the same hereditaments and properties, or any of them, and any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, and any possibility, right or title of entry or action, and any other interest capable of being inherited, whether the same estates, possibilities, rights, titles and interests, or any of them, are in possession, reversion, remainder or contingency;

"Mortgage."
Imp. Act,
30-31 V.
c. 69, s. 2.

"Mortgagee."

- (b) "Mortgage" shall include any lien for unpaid purchase money, and any charge, incumbrance, or obligation of any nature whatever upon any land or tenements of a testator or intestate, and "mortgagee" shall have a meaning corresponding with that of mortgage;

"Personal
estate."

- (c) "Personal estate" shall include leasehold estates and other chattels real, and also money, shares of government and other funds, securities for money (not being real estate), debts, choses in action, rights, credits, goods, and all other property, except real estate, which by law devolves upon the executor or administrator, and any share or interest therein;

"Real
estate."

- (d) "Real estate" shall include messuages, land, rents and hereditaments, whether freehold or of any other tenure, and whether corporeal, incorporeal

Bar - No 1272

Specimen
for Boas - Com

No 1272

No 6779

No 1625

University of Toronto.
FACULTY OF MEDICINE
EXAMINERS' RETURN, 1922

Subject.....

Year.....Class.....Hospital.....

Date _____

Tot

[illegible]

Examiners.

or personal, and any undivided share thereof, and any estate, right, or interest (other than a chattel interest) therein;

- (e) "Will" shall include a testament, and a codicil, and an appointment by will, or by writing in the nature of a will in exercise of a power, and also a disposition by will and testament, or devise of the custody and tuition of any child, by virtue of *The Infants Act*, and any other testamentary disposition. R.S.O. 1914, c. 120, s. 2.
- "Will,"
Imp. Act,
1 V. c. 26,
s. 1.
Rev. Stat.
c. 186.

WILLS BEFORE 1ST JANUARY, 1874.

2. Where a will made before, and not re-executed, republished or revived after the 1st day of January, 1874, by any person dying after the 6th day of March, 1834, contains a devise in any form of words of all such real estate as the testator dies seised or possessed of, or of any part or proportion thereof, such will shall be valid and effectual to pass any land acquired by the devisor, after the making of such will, in the same manner as if the title thereto had been acquired before the making thereof. R.S.O. 1914, c. 120, s. 3.

When real estate subsequently acquired may pass by the will.

3. Where land is devised in any such will it shall be considered that the devisor intended to devise all such estate as he was seised of in the same land, whether in fee simple or otherwise, unless it appears upon the face of such will that he intended to devise only an estate for life, or other estate less than he was seised of at the time of making the will containing such devise. R.S.O. 1914, c. 120, s. 4.

What estate deemed to pass by devise.

4. Any will affecting land executed after the 6th day of March, 1834, and before the 1st day of January, 1874, in the presence of and attested by two or more witnesses shall have the same validity and effect as if executed in the presence of and attested by three witnesses; and it shall be sufficient if the witnesses subscribed their names in presence of each other, although their names were not subscribed in presence of the testator. R.S.O. 1914, c. 120, s. 5.

Witness need not subscribe in the presence of the testator.

5. After the 4th day of May, 1859, and before the 1st day of January, 1874, every married woman might, by devise or bequest executed in the presence of two or more witnesses, neither of whom was her husband, make any devise or bequest of her separate property, real or personal, or of any rights therein, whether such property was acquired before or after marriage, to or among her child or children issue of any marriage, and failing there being any issue, then to her husband, or as she might see fit, in the same manner as if she were sole and unmarried. R.S.O. 1914, c. 120, s. 6.

Will by married woman between 4th May, 1859, and 1st January, 1874.

WILLS AFTER 1ST JANUARY, 1874.

Operation of
succeeding
sections.

6. Unless herein otherwise expressly provided, the subsequent sections of this Act shall not extend to any will made before the 1st day of January, 1874; but every will re-executed or re-published, or revived by any codicil, shall for the purposes of those sections, be deemed to have been made at the time at which the same was so re-executed, re-published or revived. R.S.O. 1914, c. 120, s. 7.

Imp. Act,
1 V. c. 26,
s. 34.

Application
of sections
21, 22, 25
and 26.

7. Sections 21, 22, 25 and 26 shall not apply to the will of any person who died before the 1st day of January, 1869, but shall apply to the will of every person who died since the 31st day of December, 1868. R.S.O. 1914, c. 120, s. 8.

Rev. Stat.
cc. 148, 138.

Power to
dispose of all
property.
Imp. Act,
1 V. c. 26,
s. 3.

Estates
pur autre vie.

Contingent
interests.

Rights of
entry

Property
acquired
after the
will.

8. Subject to the provisions of *The Devolution of Estates Act* and of *The Accumulations Act*, every person may devise, bequeath, or dispose of by will, executed in manner herein-after mentioned, all real estate and personal estate to which he may be entitled, at the time of his death, and which, if not so devised, bequeathed, or disposed of, would devolve upon his heirs or upon his executor or administrator; and the power hereby given shall extend to estates *pur autre vie*, whether there is or is not any special occupant thereof, and whether the same are corporeal or incorporeal hereditaments; and also to all contingent, executory, or other future interests in any real estate or personal estate, whether the testator is or is not ascertained as the person, or one of the persons, in whom the same may become vested, and whether he is entitled thereto under the instrument by which the same were created, or under any disposition thereof by deed or will, and also to all rights of entry for conditions broken and other rights of entry, and also to such of the same estates, interests and rights respectively, and other real estate and personal estate, as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will. R.S.O. 1914, c. 120, s. 9.

Widow's
right to
dispose of
crop. 20 Hy.
3, (St. of
Merton) c. 2.

9. A widow may, in like manner, bequeath the crop of her ground as well of her dower as of other her real estate. R.S.O. 1914, c. 120, s. 10.

Wills by
infants in-
valid. Imp.
Act, 1 V.
c. 26, s. 7.

10. Save as provided by subsection 2 of section 13 no will made by any person under the age of twenty-one years shall be valid. R.S.O. 1914, c. 120, s. 11, *part*.

Execution.
Imp. Act,
1 V. c. 26,
s. 9.

11.—(1) No will shall be valid unless it is in writing and executed in manner hereinafter mentioned; that is to say, it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by

his direction; and such signature shall be made or acknowledged by the testator, in the presence of two or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator; but no form of attestation shall be necessary.

(2) Every will, so far only as regards the position of the signature of the testator, or of the person so signing for him, shall be valid, within the meaning of this Act, if the signature is so placed, at, or after, or following or under, or beside, or opposite to the end of the will, that it is apparent on the face of the will that the testator intended to give effect by such signature to the writing signed as his will; and no such will shall be affected by the circumstance that the signature does not follow or is not immediately after the foot or end of the will, or by the circumstance that a blank space intervenes between the concluding word of the will and the signature, or by the circumstance that the signature is placed among the words of the *testimonium* clause, or of the clause of attestation, or follows or is after or under the clause of attestation either with or without a blank space intervening, or follows, or is after, or under, or beside the names or one of the names of the subscribing witnesses, or by the circumstance that the signature is on a side, or page, or other portion of the paper or papers containing the will, whereon no clause or paragraph or disposing part of the will is written above the signature, or by the circumstance that there appears to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature; and the enumeration of the above circumstances shall not restrict the generality of the above enactment; but no signature shall be operative to give effect to any disposition, or direction which is underneath, or which follows it, nor shall it give effect to any disposition or direction inserted after the signature was made. R.S.O. 1914, c. 120, s. 12.

12. No appointment made by will, in exercise of any power, shall be valid unless the same is executed in manner hereinbefore required; and every will executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it has been expressly required that a will made in exercise of such power shall be executed with some additional or other form of execution or solemnity. R.S.O. 1914, c. 120, s. 13.

13.—(1) Any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before 1st January, 1874. R.S.O. 1914, c. 120, s. 14.

Attestation

Position of
signature.
Imp. Act
15-16 V.
c. 24, s. 1.Exercise of
appointments
by will.
Imp. Act,
1 V. c. 26,
s. 10.Wills of
personalty
of soldiers
and sailors.
Imp. Act,
1 V. c. 26,
s. 11.

Testamen-
tary cap-
acity of
soldier or
sailor
although
a minor.

(2) Any such soldier, mariner or seaman shall be deemed to have been since the 4th day of August, 1914, of testamen-
tary capacity and to have been capable of making a valid
disposition by his will of any of his property whether real or
personal, notwithstanding that he was at the time of the
execution of his will under the age of twenty-one years.
1919, c. 29, s. 1.

Publication
unnecessary.
Imp. Act,
1 V. c. 26,
s. 13.

14. Every will executed in manner hereinbefore required
shall be valid without any other publication thereof. R.S.O.
1914, c. 120, s. 15.

Effect of
incompetency
of witness.
Imp. Act,
1 V. c. 26,
s. 14.

15. If any person who attests the execution of a will is,
at the time of the execution thereof, or becomes at any time
afterwards, incompetent to be admitted as a witness to prove
the execution thereof, such will shall not on that account be
invalid. R.S.O. 1914, c. 120, s. 16.

Gifts, etc.,
to witness
invalid.
Imp. Act,
1 V. c. 26,
s. 15.

16. If any person attests the execution of any will to
whom, or to whose wife or husband, any beneficial devise,
legacy, estate, interest, gift, or appointment of or affect-
ing any real estate or personal estate, other than and except
charges and directions for the payment of any debt, is thereby
given or made, such devise, legacy, estate, interest, gift, or
appointment shall, so far only as concerns such person attest-
ing the execution of such will, or the wife or husband of
such person, or any person claiming under such person or
such wife or husband, be utterly null and void, and such
person so attesting shall be admitted as a witness to prove
the execution of such will, or the validity or invalidity
thereof, notwithstanding such devise, legacy, estate, interest,
gift, or appointment mentioned in such will. R.S.O. 1914,
c. 120, s. 17.

Creditor as
witness.
Imp. Act,
1 V. c. 26,
s. 16.

17. In case, by any will, any real estate or personal estate
is charged with any debt, and any creditor, or the wife or
husband of any creditor, whose debt is so charged attests the
execution of such will, such creditor, notwithstanding such
charge, shall be admitted as a witness to prove the execution
of such will, or the validity or invalidity thereof. R.S.O.
1914, c. 120, s. 18.

Executor as
witness.
Imp. Act,
1 V. c. 26,
s. 17.

18. No person shall, on account of his being an executor
of a will, be incompetent to be admitted as a witness to
prove the execution of such will, or the validity or invalidity
thereof. R.S.O. 1914, c. 120, s. 19.

Execution
out of On-
tario by a
British
subject.

19.—(1) Every will made out of Ontario by a British
subject, whatever may be his domicile at the time of making
the same or at the time of his death, shall, as regards per-
sonal estate, be held to be well executed for the purpose of
being admitted to probate in Ontario, if the same was made

according to the forms required either by the law of the place where the same was made, or by the law of the place where such person was domiciled when the same was made, or by the law then in force in that part of His Majesty's Dominions where he had his domicile of origin.

Imp. Act,
24 and 25 V.
c. 114.

(2) Every will made within Ontario by a British subject whatever may be his domicile at the time of making the same or at the time of his death, shall, as regards personal estate, be held to be well executed and shall be admitted to probate in Ontario if the same was made and executed according to the forms required by the law of Ontario.

Execution by
British sub-
ject in
Ontario.

(3) No will shall be held to be revoked or to have become invalid, nor shall the construction thereof be altered, by reason of any subsequent change of domicile of the person making the same.

Change of
domicile.

(4) Nothing in this section shall invalidate any will, as regards personal estate, which would have been valid if this section had not been passed, except as such will may be revoked or altered by any subsequent will made valid by this section.

Saving.

(5) This section, except subsection 2, shall extend only to wills made by persons dying after the 17th day of March, 1902, and subsection 2 shall extend only to wills made by persons dying after the 19th day of March, 1910. R.S.O. 1914, c. 120, s. 20.

Application
to wills of
persons dy-
ing after
17th March,
1902.

20.—(1) Every will made by any person dying on or after the 13th day of April, 1897, shall be revoked by the marriage of the testator, except,—

Revocation
by marriage.
Imp. Act,
1 V. c. 26,
s. 18.

(a) where it is declared in the will that the same is made in contemplation of such marriage;

Exceptions.

(b) where the wife or husband of the testator elects to take under the will, by an instrument in writing signed by the wife or husband and filed, within one year after the testator's death, in the office of the surrogate clerk at Toronto;

(c) where the will is made in the exercise of a power of appointment and the real estate or personal estate thereby appointed would not in default of such appointment pass to the testator's heirs, executor or administrator, or the person entitled as the testator's next of kin under *The Devolu-*
tion of Estates Act.

Rev. Stat.
c. 148.

(2) The will of any testator who died between the 31st day of December, 1868, and the 13th day of April, 1897, shall be held to have been revoked by his subsequent marriage, unless such will was made under the circumstances set forth in clause c. R.S.O. 1914, c. 120, s. 21.

Wills of
persons
dying be-
tween 31st
Dec. 1868
and 13th
April, 1897.

Change in
circumstan-
ces. Imp.
Act, 1 V.
c. 26, s. 19.

21. No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances. R.S.O. 1914, c. 120, s. 22.

Revocation,
how affected.
Imp. Act,
1 V. c. 26,
s. 20.

22. No will, or any part thereof, shall be revoked otherwise than as aforesaid provided by section 20, or by another will executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction with the intention of revoking the same. R.S.O. 1914, c. 120, s. 23.

Obliterations,
interlinea-
tions, etc.
Imp. Act,
1 V. c. 26,
s. 21.

23. No obliteration, interlineation or other alteration made in any will after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will before such alteration are not apparent, unless such alteration is executed in like manner as hereinbefore is required for the execution of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed, if the signature of the testator and the subscription of the witnesses are made in the margin or in some other part of the will opposite or near to such alteration, or at the foot or end of, or opposite to, a memorandum referring to such alteration, and written at the end or in some other part of the will. R.S.O. 1914, c. 120, s. 24.

Revival.
Imp. Act,
1 V. c. 26,
s. 22.

24. No will, or any part thereof, which has been in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same; and where any will which has been partly revoked, and afterwards wholly revoked, is revived such revival shall not extend to so much thereof as was revoked before the revocation of the whole thereof, unless an intention to the contrary is shown. R.S.O. 1914, c. 120, s. 25.

Operation of
the will as to
any interest
left in
testator.
Imp. Act,
1 V. c. 26,
s. 23.

25. No conveyance or other act made or done subsequently to the execution of a will, of or relating to any real estate or personal estate therein comprised, except an act by which such will is revoked as aforesaid, shall prevent the operation of the will with respect to such estate, or interest in such real estate or personal estate, as the testator had power to dispose of by will at the time of his death. R.S.O. 1914, c. 120, s. 26.

Will to speak
from death.
Imp. Act,
1 V. c. 26,
s. 24.

26.—(1) Every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears by the will.

Imp. Act,
56-57 V. c.
63, s. 3.

(2) This section shall apply to the will of a married woman made during coverture, whether she is or is not

possessed of or entitled to any separate property at the time of making it, and such will shall not require to be re-executed or re-published after the death of her husband. R.S.O. 1914, c. 120, s. 27.

27. Unless a contrary intention appears by the will such real estate as is comprised or intended to be comprised in any devise in such will contained which fails or becomes void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law, or otherwise incapable of taking effect, shall be included in the residuary devise, if any, contained in such will. R.S.O. 1914, c. 120, s. 28.

Disposition of
lapsed de-
vise. Imp.
Act, 1 V.
c. 26, s. 25

28. A devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a leasehold estate, if the testator had no freehold estate which could be described by it, shall be construed to include his leasehold estates, or any of them, to which such description will extend as well as freehold estates, unless a contrary intention appears by the will. R.S.O. 1914, c. 120, s. 29.

Disposition
of lease-
holds, under
a general de-
vise of real
estate. Imp.
Act, 1 V.
c. 26, s. 26.

29. A general devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate or any real estate to which such description will extend, which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention appears by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal estate described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description will extend, which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention appears by the will. R.S.O. 1914, c. 120, s. 30.

Disposition
of property
over which
testator has
a general
power of
appointment
under gen-
eral devise
or bequest.
Imp Act,
1 V. c. 26,
s. 27.

30. Where any real estate is devised to any person without any words of limitation such devise shall, subject to *The Devolution of Estates Act*, be construed to pass the fee simple, or other the whole estate or interest, which the testator had power to dispose of by will, unless a contrary intention appears by the will. R.S.O. 1914, c. 120, s. 31.

Estate pass-
ing under
devise with-
out words of
limitation.
Imp. Act,
1 V. c. 26,
s. 28.
Rev. Stat.
c. 148.

31. Where any real estate is devised by any testator, dying on or after the 5th day of March, 1880, to the heir or heirs of such testator, or of any other person, and no contrary or other intention is signified by the will, the words

Meaning of
"heir" in a
devise of real
estate.

"heir" or "heirs" shall be construed to mean the person or persons to whom the real estate of the testator, or of such other person as the case may be, would descend under the law of Ontario in case of an intestacy. R.S.O. 1914, c. 120, s. 32.

Import of words "die without issue," or to that effect. Imp. Act 1 V. c. 26, s. 29.

32. In any devise or bequest of real estate or personal estate, the words "die without issue," or "die without leaving issue," or "have no issue," or any other words which import either a want or failure of issue of any person in his lifetime, or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention appears by the will by reason of such person having a prior estate tail, or of a preceding gift, being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise; but this Act shall not extend to cases where such words import if no issue described in a preceding gift be born, or if there be no issue who live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue. R.S.O. 1914, c. 120, s. 33.

Saving.

Estate passing under devise to trustee or executor.

Imp. Act 1 V. c. 26, s. 30.

33. Where any real estate is devised to a trustee or executor such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years absolute or determinable, or an estate of freehold is thereby given to him expressly or by implication. R.S.O. 1914, c. 120, s. 34.

When devise to a trustee shall pass the whole estate beyond what is requisite for the trust. Imp. Act 1 V. c. 26, s. 31.

Rev. Stat. c. 148.

34. Where any real estate is devised to a trustee without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, is not given to any person for life, or such beneficial interest is given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall, subject to *The Devolution of Estates Act*, be construed to vest in such trustee the fee simple or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust are satisfied. R.S.O. 1914, c. 120, s. 35.

When devises in tail not to lapse. Imp. Act 1 V. c. 26, s. 32.

35. Where any person to whom any real estate is devised for an estate tail, or an estate in *quasi* entail, dies in the lifetime of the testator, leaving issue who would be inheritable under such entail, and any such issue are living at the time of the death of the testator, such devise shall not lapse but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention appears by the will. R.S.O. 1914, c. 120, s. 36.

36.—(1) Where any person, being a child or other issue or the brother or sister of the testator to whom any real estate or personal estate is devised or bequeathed, for any estate or interest not determinable at or before the death of such person, dies in the life-time of the testator either before or after the making of the will, leaving issue, and any of the issue of such person are living at the time of the death of the testator, such devise or bequest shall not lapse but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention appears by the will. 1919, c. 25, s. 15.

When gifts to issue or certain other relatives not to lapse by reason of death in life-time of testator.

(2) The provisions of this section shall apply to a devise or a bequest to children or other issue or to brothers or sisters as a class. 1926, c. 39, s. 2.

Application of section to bequest to class.

37.—(1) Where any person has died since the 31st day of December, 1865, or hereafter dies, seised of or entitled to any estate or interest in any real estate, which, at the time of his death, was or is charged with the payment of any sum of money by way of mortgage, and such person has not by his will or deed or other document, signified any contrary or other intention, the heir or devisee to whom such real estate descends or is devised shall not be entitled to have the mortgage debt discharged or satisfied out of the personal estate, or any other real estate of such person, but the real estate so charged shall, as between the different persons claiming through or under the deceased person, be primarily liable to the payment of all mortgage debts with which the same is charged, every part thereof according to its value bearing a proportionate part of the mortgage debts charged on the whole thereof.

Primary liability of real estate to satisfy specific charge.

Imp. Act, 17-18 V. c. 113, s. 1.

(2) In the construction of a will to which this section relates, a general direction that the debts, or that all the debts, of the testator shall be paid out of his personal estate, or a charge or direction for the payment of debts upon or out of residuary real estate and personal estate or residuary real estate shall not be deemed to be a declaration of an intention contrary to or other than the rule in subsection 1 contained, unless such contrary or other intention is further declared by words expressly or by necessary implication referring to all or some of the testator's debts charged by way of mortgage on any part of his real estate.

Consequence of general direction for payment of debts out of personalty or residue. Imp. Act, 30-31 V. c. 69, s. 1. and 40-41 V. c. 31, s. 1.

(3) Nothing herein shall affect or diminish any right of the mortgagee to obtain full payment or satisfaction of his mortgage debt, either out of the personal estate of the person so dying or otherwise; and nothing herein shall affect the rights of any person claiming under any will, deed or document made before the 1st day of January, 1874. R.S.O. 1914, c. 120, s. 38.

Saving of mortgagee's rights.

CHAPTER 150.

The Trustee Act.

INTERPRETATION.

1. In this Act,—

- "Assign." (a) "Assign" shall mean and include the execution and performance by a person of every necessary or suitable deed or act for assigning, surrendering, or otherwise transferring land of which such person is possessed, either for the whole estate of the person so possessed or for any less estate; and "assignment" shall have a corresponding meaning;
- "Assignment." (b) "Contingent right" as applied to land shall mean and include a contingent and executory interest, and a possibility coupled with an interest, whether the object of the gift or limitation of such interest or possibility is or is not ascertained; also a right of entry whether immediate or future, vested or contingent;
- "Contingent right." (c) "Convey" applied to any person, shall mean and include the execution and delivery by such person of every necessary or suitable assurance for conveying or disposing to another land whereof such person is seized, or wherein he is entitled to a contingent right, either for his whole estate or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance; and "conveyance" shall have a corresponding meaning;
- "Convey." (d) "Devisee" shall include the heir of a devisee, and the devisee of an heir, and any person who may claim right by devolution of title of a similar description;
- "Conveyance." (e) "Instrument" shall include a deed, a will and a written document and an Act of this Legislature, but not a judgment or order of a court;
- "Devisee." (f) "Land" shall include messuages, and all other hereditaments, whether corporeal or incorporeal, chattels and other personal property transmissible to heirs, money to be laid out in the purchase of land,
- Imp. Act. 56-57 Vict. c. 53, s. 50, part.
- "Instrument."
- "Land."

and any share of the same hereditaments and properties, or any of them, and any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, and any possibility, right or title of entry or action, and any other interest capable of being inherited, whether the same estates, possibilities, rights, titles and interests, or any of them, are in possession, reversion, remainder or contingency;

- (g) "Lunatic" shall mean any person who has been declared a lunatic;
- (h) "Mortgage" shall be applicable to every estate, interest, or property, in land or personal estate, which is merely a security for money; and "mortgagee" shall have a corresponding meaning and shall include every person deriving title under the original mortgagee; Imp. Act, 13-14 Vict. c. 60, s. 2 and 56-57 Vict. c. 53, s. 50.
- (i) "Person of unsound mind" shall mean any person, not an infant, who, not having been declared a lunatic, is incapable, from infirmity of mind, to manage his own affairs; "Person of unsound mind."
- (j) "Personal Estate" shall include leasehold estates and other chattels real, and also money, shares of Government and other funds, securities for money (not being real estate), debts, choses in action, rights, credits, goods, and all other property, except real estate, which by law devolves upon the executor or administrator, and any share or interest therein; "Personal estate."
- (k) "Personal Representative" shall mean and include an executor, an administrator, and an administrator with the will annexed; "Personal representative."
- (l) "Possessed" shall be applicable to any vested estate less than a life estate, legal or equitable, in possession or in expectancy, in any land; "Possessed."
- (m) "Securities" shall include stocks, funds and shares; "Securities."
- (n) "Seized" shall be applicable to any vested interest for life, or of a greater description, and shall extend to estates, legal and equitable, in possession, or in futurity, in any land; "Seized."
- (o) "Stock" shall include fully paid up shares, and any fund, annuity, or security transferable in books kept by any incorporated bank, company or society, or by instrument of transfer, either alone or accompanied by other formalities, and any share or interest therein; "Stock."

- "Transfer." (p) "Transfer," in relation to stock, shall include the performance and execution of every deed, power of attorney, act or thing, on the part of the transferor to effect and complete the title in the transferee;
- "Trust." (q) "Trust" shall not mean the duties incident to an estate conveyed by way of mortgage; but, with this exception, shall include implied and constructive trusts and cases where the trustee has some beneficial estate or interest in the subject of the trust, and shall extend to and include the duties incident to the office of personal representative of a deceased person; and "trustee" shall have a corresponding meaning and shall include a trustee however appointed and several joint trustees;
- "Trustee."
- "Will." (r) "Will" shall include a testament, and a codicil, and an appointment by will, or by writing in the nature of a will in exercise of a power, and also a disposition by will and testament, or devise of the custody and tuition of any child, by virtue of *The Infants Act*, and any other testamentary disposition. 1926, c. 40, s. 2.
- Rev. Stat.
c. 186.

RETIREMENT OF TRUSTEES.

Retirement
of trustees.
Imp. Act.
56-57 Vict.
c. 53, s. 11.

2.—(1) Where there are more than two trustees if one of them by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, consent by deed to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Act without any new trustee being appointed in his place.

Application
of section.

(2) This section shall not apply to executors or administrators. 1926, c. 40, s. 3.

APPOINTMENT OF NEW TRUSTEES.

Power of ap-
pointing new
trustees.
Imp. Act.
56-57 Vict.
c. 53, s. 10.

3. Where a trustee dies or remains out of Ontario for more than twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, or has been convicted of an indictable offence or is bankrupt or insolvent, the person nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust, or if there is no such person, or no such person able and willing to act, the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee, may by writing

appoint another person or other persons to be a trustee or trustees in the place of the trustee dying, remaining out of Ontario, desiring to be discharged, refusing or being unfit or incapable. 1926, c. 40, s. 4.

4. Subject to the terms of any instrument creating a trust the sole trustee or the last surviving or continuing trustee appointed for the administration of the trust, may appoint by will another person or other persons to be a trustee or trustees in the place of such sole or surviving or continuing trustee after his death. 1926, c. 40, s. 5.

Authority of surviving trustee to appoint successor by will.

5.—(1) The Supreme Court may make an order for the appointment of a new trustee or new trustees, either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee.

Power of the Court to appoint new trustees.

Imp. Act, 56-57 Vict. c. 53, s. 25.

(2) An order under this section and any consequential vesting order or conveyance shall not operate as a discharge from liability for the acts or omissions of the former or continuing trustees. 1926, c. 40, s. 6.

Limitation of effect of order.

6. On the appointment of a new trustee for the whole or any part of trust property,—

What may be done. Imp. Act, 56-57 Vict. c. 53, s. 10.

(a) The number of trustees may be increased; and

Increase in number.

(b) A separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees; or, if only one trustee was originally appointed, then one separate trustee may be so appointed for the first mentioned part; and

Separate trustees for distinct trusts.

(c) It shall not be obligatory to appoint more than one new trustee where only one trustee was originally appointed or to fill up the original number of trustees where more than two trustees were originally appointed; but, except where only one trustee was originally appointed, a trustee shall not be discharged under this section from his trust unless there will be at least two trustees to perform the trust; and

Where not less than two to be appointed.

(d) Any assurance or thing requisite for vesting the trust property, or any part thereof, in the person who is the trustee, or jointly in the persons who are the trustees, shall be executed or done. 1926, c. 40, s. 7.

Execution and performance of requisite deeds and acts.

Powers of
new trustee.

7. Every new trustee so appointed, as well before as after all the trust property becomes by law or by assurance or otherwise vested in him, shall have the same powers, authorities and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust. 1926, c. 40, s. 8.

Application
of Act.

8. The provisions of this Act relative to the appointment of new trustees shall apply to the case of a person nominated trustee in a will but dying before the testator. 1926, c. 40, s. 9.

NOTE.—(*As to appointment of trust company as sole trustee, see The Loan and Trust Corporations Act, Rev. Stat. c. 223.*)

VESTING INSTRUMENTS.

Vesting of
trust
property in
new or
continuing
trustees
without con-
veyance.

Imp. Act,
56-57 Vict.
c. 53, s. 12.

9.—(1) Where an instrument, executed after the 1st day of July, 1886, by which a new trustee is appointed to perform any trust, contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any personal estate so subject, shall vest in the person or persons who, by virtue of such instrument, shall become and be the trustee or trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in him, or in them as joint tenants, and for the purposes of the trust, that estate, interest or right.

On
retirement
of a
trustee.

Application
to
mortgages,
stocks,
shares, etc.

(2) Where such an instrument, by which a retiring trustee is discharged under this Act, contains such a declaration as is in this section mentioned by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates.

See 56 & 57
Vict. Imp., c.
53, s. 12 (3).

Interpreta-
tion for
registration
purposes.

(3) This section shall not extend to land conveyed by way of mortgage for securing money subject to the trust, or to any share, stock, annuity, or property transferable only in books kept by a company or other body, or in manner prescribed by or under an Act of Parliament or of this Legislature.

Vesting
orders as to
land, where
Court may
make.

Imp. Act,
56-57 Vict.
c. 53, s. 26.

(4) For the purpose of registration the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act. 1926, c. 40, s. 10.

VESTING ORDERS, AND ORDERS RELEASING CONTINGENT RIGHTS,
AS TO LAND.

10.—(1) In any of the following cases,—

(a) Where the Supreme Court appoints or has appointed a new trustee; or

Vesting
order,—when
Court may
make.

(b) Where a trustee entitled to or possessed of any land, or entitled to a contingent right therein, either solely or jointly with any other person is an infant, or is out of Ontario, or cannot be found; or

(c) Where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any land; or

(d) Where it is uncertain whether the last trustee known to have been entitled to or possessed of any land is living or dead; or

(e) Where there is no heir or personal representative of a trustee who was entitled to or possessed of land and has died intestate as to that land, or where it is uncertain who is the heir or personal representative or devisee of a trustee who was entitled to or possessed of land and is dead; or

(f) Where a trustee jointly or solely entitled to or possessed of any land, or entitled to a contingent right therein, has been required by or on behalf of a person entitled to require a conveyance of the land or a release of the right, to convey the land or to release the right, and has wilfully refused or neglected to convey the land or release the right for fourteen days after the date of the requirement;

the Supreme Court may make an order, vesting the land in any such person in any such manner, and for any such estate, as the Court may direct, or releasing, or disposing of the contingent right to such person as the Court may direct.

(2) Where the order is consequential on the appointment of a new trustee the land shall be vested, for such estate as the Court may direct, in the persons who, on the appointment, are the trustees.

Vesting of
estate.

(3) Where the order relates to a trustee entitled jointly with another person, and such trustee is out of Ontario or cannot be found, the land or right shall be vested in such other person, either alone or with some other person. 1926, c. 40, s. 11.

Where
trustee out
of Ontario.

[For provisions as to lunatic trustee or mortgagee, see *The Lunacy Act, Rev. Stat. c. 98*].

Orders as to
contingent
rights of
unborn
persons.

Imp. Act,
56-57 Vict.
c. 53, s. 27.

11. Where any land is subject to a contingent right in an unborn person, or a class of unborn persons, who, on coming into existence, would, in respect thereof, become entitled to or possessed of the land on any trust, the Supreme Court may make an order releasing the land from the contingent right, or may make an order vesting in any person the estate to or of which the unborn person, or class of unborn persons, would, on coming into existence, be entitled or possessed in the land. 1926, c. 40, s. 12.

Vesting
order in
place of
conveyance
by infant
mortgagee.

Imp. Act,
56-57 Vict.
c. 53, s. 28.

12. Where any person entitled to or possessed of land, or entitled to any contingent right in land, by way of security for money, is an infant, the Supreme Court may make an order vesting or releasing or disposing of the land or right in like manner as in the case of an infant trustee. 1926, c. 40, s. 13.

VESTING ORDERS, AND ORDERS RELEASING CONTINGENT RIGHTS,
AS TO STOCKS, AND CHOSES IN ACTION.

Vesting
orders as to
stock and
chose in
action, when
court may
make.

Imp. Act,
56-57 Vict.
c. 53, s. 35.

13.—(1) In any of the following cases,—

- (a) where the Supreme Court appoints, or has appointed, a new trustee; or
- (b) where a trustee entitled alone, or jointly with another person, to stock, or to a chose in action;
 - (i) is an infant, or
 - (ii) is out of Ontario, or
 - (iii) cannot be found, or
 - (iv) neglects or refuses to transfer stock, or receive the dividends or income thereof, or to sue for, or recover, a chose in action, according to the direction of the person absolutely entitled thereto, for fourteen days next after a request in writing has been made to him by the person so entitled, or
 - (v) neglects or refuses to transfer stock, or receive the dividends or income thereof, or to sue for, or recover a chose in action for fourteen days next after an order of the Supreme Court for that purpose has been served on him; or
- (c) where it is uncertain whether a trustee entitled alone, or jointly with another person to stock, or to a chose in action is alive or dead,

the Supreme Court may make an order vesting the right to transfer, or call for a transfer of stock, or to receive the

dividends or income thereof, or to sue for, or recover a chose in action, in any such person as the Court may appoint.

(2) Where the order is consequential on the appointment by the Court of a new trustee, the right shall be vested in the persons who, on the appointment, are the trustees. Vesting in new trustee.

(3) Where the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in that last mentioned person either alone, or jointly with any other person whom the Court may appoint. Vesting in person having joint interest.

(4) Where a vesting order may be made under this section the Court may, if it is more convenient, appoint some proper person to make, or join in making, the transfer. Appointment of person to transfer.

(5) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the Court under this Act may transfer the stock to himself, or any other person, according to the order, and all incorporated banks and all companies shall obey every order made under this section. Transfer, how to be made.

(6) After notice in writing of an order under this section it shall not be lawful for any incorporated bank or any company to transfer any stock to which the order relates, or to pay any dividends thereon except in accordance with the order. After notice of order, no transfer to be made contrary thereto.

(7) The Supreme Court may make declarations and give directions concerning the manner in which the right to any stock, or chose in action, vested under the provisions of this Act, is to be exercised. Court may make declaration.

(8) The provisions of this Act as to vesting orders shall apply to shares in ships registered under the Acts relating to merchant shipping as if they were stock. 1926, c. 40, s. 14. Ships, shares in. Imp. Act. 56-57 Vict. c. 53, s. 35.

[For provisions as to lunatic trustee or mortgagee, see *The Lunacy Act, Rev. Stat. c. 98*].

TRUSTEES FOR CHARITIES.

14. The Supreme Court may exercise the powers herein conferred for the purpose of vesting any land or personal estate in the trustee of any charity or society over which the Court would have jurisdiction upon action duly instituted. 1926, c. 40, s. 15. Exercise of powers in favour of charities, etc. Imp. Act. 56-57 Vict. c. 53, s. 39.

15.—(1) Where land is held by trustees for a charitable purpose and it is made to appear that the land can be no longer advantageously used for such charitable purpose or that for any other reason the land ought to be sold, a judge of the Supreme Court may make an order authorizing the sale thereof and may give such directions in relation thereto and for securing the due investment and application of the money arising from the sale as may be deemed proper. Power to order a sale in proper cases.

Notice to
Public
Trustee.

(2) No such order shall be made unless and until notice of the application has been given to the Public Trustee. 1926, c. 40, s. 16.

WHO MAY APPLY.

Who may
apply for
appointment
of new
trustee, or
vesting
order, etc.

Imp. Act,
13 and 14
Vict. c. 60,
ss. 37, 40
and 41.

In case of
mortgaged
property.

16.—(1) An order under this Act for the appointment of a new trustee, or concerning any land or personal estate, subject to a trust, may be made upon the application of any person beneficially interested therein, whether under disability or not, or upon the application of any person duly appointed as a trustee thereof.

(2) An order concerning any land or personal estate, subject to a mortgage, may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the moneys secured by the mortgage. 1926, c. 40, s. 17.

CERTAIN POWERS AND RIGHTS OF TRUSTEES.

Purchase and Sale.

Power and
discretion of
trustee for
sale.
Rev. Stat.
c. 143.
Imp. Act,
56-57 Vict.
c. 53, s. 13,
part.

17. Subject to the provisions of *The Devolution of Estates Act* where a trust for sale or a power of sale of land or personal estate is vested in a trustee he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract subject to such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to re-sell, without being answerable for any loss. 1926, c. 40, s. 18.

Sales by
trustees not
impeachable
on certain
grounds.
Imp. Act,
56-57 Vict.
c. 53, s. 14.

18.—(1) A sale made by a trustee shall not be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made were unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

Collusion
between
purchaser
and trustee.

(2) Such sale shall not, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made were unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for the sale was made. 1926, c. 40, s. 19.

Dedication
or sale
of land
by trustee
for municipal
highway.

Dedication or Sale for Highway Purposes.

19. With the approval of the Ontario Railway and Municipal Board or of a judge of the Supreme Court, a person who holds land or a charge or claim against it or has control of

the legal title, upon any trust or for a specified or particular purpose, may, to the extent of his estate or interest, dedicate or sell, or join in dedicating or selling, to the corporation of the municipality within which it is situate, any portion of the land required by the corporation for the work of establishing, extending, widening or diverting a street, and the Board or the judge may approve thereof if it appears that it will not have the effect of defeating or seriously affecting the substantial objects or intent of the trust or purpose; provided that the approval shall not be necessary if such dedication or sale is otherwise within such person's powers. 1926, c. 40, s. 20.

Agents.

20.—(1) A trustee may appoint a solicitor to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust. Power to authorize receipt of money by solicitor;

(2) A trustee may appoint a manager or a branch manager of a chartered bank or solicitor to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of assurance or otherwise. Or banker. 56-57 Vict. Imp. Act. c. 53, s. 17.

(3) A trustee shall not be charged with a breach of trust by reason only of his having made or concurred in making any such appointment. Appointment not a breach of trust.

(4) Nothing in this section shall exempt a trustee from any liability which he would have incurred if this Act had not been passed, in case he permits any such money, valuable consideration, or property to remain in the hands or under the control of the banker or solicitor for a period longer than is reasonably necessary to enable the banker or solicitor to pay or transfer the same to the trustee. 1926, c. 40, s. 21. Liability of trustee, in certain cases, not affected.

Insurance.

21.—(1) A trustee may insure against loss or damage by fire, tempest or other casualty any building or other insurable property to any amount, including the amount of any insurance already on foot, not exceeding three-fourths of the value of such building or property, and pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts, without obtaining the consent of any person who may be entitled wholly or partly to such income. Power to insure buildings. Imp. Act. 56-57 Vict. c. 53, s. 18.

(2) This section does not apply to any building or property which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so. 1926, c. 40, s. 22. Application.

Renewals of Leases.

Power of trustees of renewable leaseholds to renew.

Imp. Act, 56 and 57 Vict., c. 53, s. 19.

And to raise money for the purpose.

22.—(1) A trustee of any leaseholds for lives or years which are renewable from time to time may, if he thinks fit, and shall, if thereto required by any person having any beneficial interest, present or future or contingent, in the leaseholds, use his best endeavours to obtain from time to time a renewed lease of the same land on reasonable terms, and for that purpose may from time to time make or concur in making a surrender of the lease for the time being subsisting, and do all such other acts as are requisite; but where, by the terms of the settlement or will, the person in possession for his life or other limited interest is entitled to enjoy the same without any obligation to renew or to contribute to the expense of renewal, this section shall not apply unless the consent in writing of that person is obtained to the renewal on the part of the trustee.

(2) If money is required to pay for the renewal the trustee effecting the renewal may pay the same out of any money then in his hands in trust for the persons beneficially interested in the land to be comprised in the renewed lease, and if he has not in his hands sufficient money for the purpose he may raise the money required by mortgage of the land to be comprised in the renewed lease, or of any other land for the time being subject to the uses or trusts to which that land is subject, and no person advancing money upon a mortgage purporting to be made under this power shall be bound to see that the money is wanted, or that no more is raised than is wanted for the purpose or to see to the due application of the money. 1926, c. 40, s. 23.

Passing of Accounts.

When trustee may file accounts.

23.—(1) A trustee desiring to pass the accounts of his dealings with the trust estate may file his accounts in the office of the surrogate court of a county or district in which he or a co-trustee is resident or in which any part of the trust estate is situate, and the proceedings and practice upon the passing of such accounts shall be the same and have the like effect as the passing of executors' or administrators' accounts in the surrogate court; but in the case of trustees under a will the accounts shall be filed and passed in the office of the surrogate court by which probate of the will was granted.

Fixing compensation of trustee.

(2) Where the compensation payable to a trustee has not been fixed by the instrument creating the trust or otherwise, the judge of the surrogate court upon the passing of the accounts of the trustee shall have power to fix the amount of compensation payable to the trustee and the trustee shall thereupon be entitled to retain out of any moneys in his hands the amount so determined. 1926, c. 40, s. 24.

Receipts.

24. The payment of any money to and the receipt thereof by any person to whom the same is payable upon any trust, or for any limited purpose, and such payment to and receipt by the survivor or survivors of two or more mortgagees or holders or the executors or administrators of such survivor or their or his assigns, shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof. 1926, c. 40, s. 25. [See also *The Mortgages Act, Rev. Stat. c. 140.*]

Receipts of
trustees to
be effectual
discharges.

Surviving Trustee.

25. Where a power or trust is given to or vested in two or more trustees jointly it may be exercised or performed by the survivor or survivors of them for the time being. 1926, c. 40, s. 26.

Powers of
two or more
trustees.

Imp. Act,
56 and 57,
Vict., c. 53
s. 22.

INVESTMENTS.

26.—(1) A trustee having money in his hands which it is his duty, or which it is in his discretion to invest at interest, may invest the same in the debentures, bonds, stock or other securities of, or guaranteed by, the Government of the Dominion of Canada, or of or guaranteed by any Province of Canada, or of the Government of the United Kingdom, or of any municipal corporation in Canada, including debentures issued for public school purposes or guaranteed by any municipal corporation in Ontario, or secured by or payable out of rates or taxes levied under the law of any Province of Canada on property situated in such Province and collectible by or through the municipality in which such property is situated, in the same manner and with the same rights of enforcing payment, as in the case of general municipal taxes in such municipality, or in securities which are a first charge on land held in fee simple in Ontario, Manitoba, Saskatchewan, Alberta or British Columbia, provided such investments are in other respects reasonable and proper, or he may entrust the same to a trust company incorporated or licensed under the laws of Ontario for guaranteed investment as set out in *The Loan and Trust Corporations Act*, provided that in the case of a company licensed under the law of Ontario it has been approved by the Lieutenant-Governor in Council.

Power to
invest trust
moneys in
certain
securities.

Rev. Stat.
c. 223.

(2) Subject to the proviso in subsection 1 any money already invested in any such stock, debentures or securities shall be deemed to have been lawfully and properly invested. 1926, c. 40, s. 27. [See also *The Loan and Trust Corporations Act, Rev. Stat. c. 223.*]

Existing
investments
legalized.

Investment
of trust
funds.

27.—(1) A trustee may deposit money with any of the societies or companies hereinafter mentioned, or may invest any money which it is his duty, or which it is in his discretion, to invest at interest, in terminable debentures or debenture stock of any such society or company, provided that such deposit or investment is in other respects reasonable and proper, and that the debentures are registered, and are transferable only on the books of the society or company in his name as trustee for the particular trust estate for which they are held, and that the deposit account in the society's or company's ledger is in the name of the trustee for the particular trust estate for which it is held and the deposit receipt or pass book is not transferable by endorsement or otherwise:

In companies
authorized
to lend
money upon
mortgages
on real estate
under certain
conditions.

(a) Any incorporated society or company authorized to lend money upon mortgages on real estate, or for that purpose and other purposes, having a capitalized, fixed, paid up and permanent stock not liable to be withdrawn therefrom of not less than \$400,000, and a reserve fund of not less than twenty-five per centum of its paid up capital, and the stock of which has a market value of not less than seven per centum premium; or

In certain
other
companies.

(b) Any society or company heretofore incorporated under Chapter 164 of the Revised Statutes of Ontario, 1877, or any Act incorporated therewith, or under Chapter 169 of the Revised Statutes of Ontario, 1887, having a capitalized, fixed, paid up, and permanent stock not liable to be withdrawn therefrom of not less than \$200,000, and a reserve fund of not less than fifteen per centum of its paid up capital, and the stock of which has a market value of not less than seven per centum premium.

What
approval
necessary.

(2) Clauses *a* and *b* shall not apply to any society or company which has not the approval of the Lieutenant-Governor in Council as one coming within the provisions of that clause, and as one in the debentures or debenture stock of which trustees may invest or with which they may deposit money.

Restriction.

(3) Such approval shall not be given with respect to any society or company which does not appear to have kept strictly within its legal powers as to borrowing and investing.

Revocation
of Order in
Council.

(4) An Order in Council made under the authority of subsection 2 may at any time be revoked. 1926, c. 40, s. 28.

Power to
vary or
transpose
securities.

28. A trustee may from time to time vary or transpose any securities in which money in his hands is invested, whether under the authority of this Act or otherwise, into or for any other securities of any nature authorized by this Act. 1926, c. 40, s. 29.

29. A trustee lending money upon the security of any property upon which he may lawfully lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, if it appears to the court that in making the loan the trustee was acting upon a report as to the value of the property made by a person whom the trustee reasonably believed to be a competent valuator, instructed and employed independently of any owner of the property, whether such valuator carried on business in the locality where the property is situate or elsewhere, and that the amount of the loan does not exceed one-half of the value of the property as stated in the report and that it was made under the advice of the valuator expressed in the report. 1926, c. 40, s. 30.

When trustee not chargeable for lending on insufficient security.

Imp. Act, 51-52 Vict. c. 59, s. 4.

30. Where a trustee has improperly advanced money on a mortgage security which would, at the time of the investment, have been a proper investment in all respects for a less sum than was actually advanced the security shall be deemed an authorized investment for such less sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest. 1926, c. 40, s. 31.

Trustee lending more than authorized amount.

Imp. Act, 57-58 Vict. c. 53, s. 9.

31. A trustee shall not be chargeable with breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorized by the instrument of trust or by the general law. 1926, c. 40, s. 32.

Liability in case of change of character of investment.

Imp. Act, 57-58 Vict. c. 10, s. 4.

PROTECTION AND INDEMNITY.

32. A trustee shall be chargeable only for money and securities actually received by him, notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects or defaults, and not for those of any other trustee, nor for any banker, broker or other person with whom any trust money or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his own wilful default; and may reimburse himself or pay or discharge out of the trust property all expenses incurred in or about the execution of his trust or powers. 1926, c. 40, s. 33.

Extent of liability of trustees.

Imp. Act, 56-57 Vict. c. 53, s. 24.

33.—(1) Where a trustee commits a breach of trust, at the instigation or request or with the consent in writing of a beneficiary, the Supreme Court may make such order as to the Court seems just for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or person claiming through him.

Trustees committing breach of trust at instigation of beneficiary.

Imp. Act, 56-57 Vict. c. 53, s. 45.

(2) This section shall apply notwithstanding that the beneficiary is a married woman entitled for her separate use and restrained from anticipation. 1926, c. 40, s. 34.

Application to separate estate of married women.

TECHNICAL BREACHES OF TRUST.

Relief of trustees committing technical breach of trust.

34. If in any proceeding affecting a trustee or trust property it appears to the court that a trustee, or that any person who may be held to be fiduciarily responsible as a trustee, is or may be personally liable for any breach of trust whenever the transaction alleged or found to be a breach of trust occurred, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust, and for omitting to obtain the directions of the court in the matter in which he committed such breach, the court may relieve the trustee either wholly or partly from personal liability for the same. 1926, c. 40, s. 35.

Imp. Act, 59-60 Vict. c. 35, s. 3.

[As to limitation of actions against trustees, see *The Limitations Act, Rev. Stat. c. 106.*]

PAYMENT INTO COURT.

Payment into court by trustees of trust funds or securities by order of Supreme Court.
Imp. Act, 56-57 Vict. c. 53, s. 42.

35.—(1) Where any money belonging to a trust is in the hands or under the control of or is vested in a sole trustee or several trustees, and it is the desire of such trustee, or of the majority of such trustees, to pay the money into court, the Supreme Court may order the payment into court to be made by the sole trustee, or by the majority of the trustees, without the concurrence of the other or others if such concurrence cannot be obtained.

Payment or delivery to accountant of Supreme Court.

(2) Where any such money is deposited with a banker or broker or other depository the court may order payment thereof to the accountant of the Supreme Court, and payment, made in pursuance of such order, shall be valid and take effect as if the same had been made on the authority, or by the act, of all the persons entitled to the money paid.

Imp. Act, 56-57 Vict. c. 53, s. 42.

Payment into court by persons holding trust moneys for trustee.

(3) Any person with whom trust money has been deposited or to whose hands trust money has come, where the trustee has been absent from Ontario for a year and is not likely to return at an early date, or in the event of the trustee's death, or where the trustee in Ontario cannot give an acquittance of the money, may make an application similar to that authorized by subsection 1.

Money found to be due infant, etc., on final passing of accounts in surrogate court to be paid into Court.

(4) Where, on the passing of the final accounts of a personal representative, guardian or trustee by the judge of a surrogate court, there is found to be in the hands of such personal representative, guardian or trustee any money belonging to an infant or to a lunatic or person of unsound mind, or to a person whose address is unknown, it shall be the duty of such personal representative, guardian or trustee to pay the money into the Supreme Court to the credit of the person who is entitled to it.

(5) A certified copy of the order or report of the judge shall be left with the accountant when the money is paid in, and the person paying it in shall be entitled to deduct \$5 for his costs. Accountant to be furnished with copy of order, etc.

(6) Where an infant, lunatic or person of unsound mind is entitled to any money, the person by whom such money is payable may pay the same into the Supreme Court to the credit of such infant, lunatic or person of unsound mind and this shall be a sufficient discharge for the money so paid into court. Moneys charged on land, stock, etc., to which infant, or lunatic, entitled. Imp. Act, 13 and 14 Vict., c. 60, s. 48.

(7) Where a trustee desires to be relieved from his trust the court may order all securities held for the trust to be transferred to the Public Trustee. Transfer of trust.

(8) Money paid into court shall be subject to the order of the court. 1926, c. 40, s. 36. Disposition.

PERSONAL REPRESENTATIVES AND DEVISEES IN TRUST.

Removal of Personal Representatives.

36.—(1) The Supreme Court may remove a personal representative upon any ground upon which such Court may remove any other trustee, and may appoint some other proper person or persons to act in the place of the executor or administrator so removed. Power of Court to remove.

(2) Any person so appointed shall, unless the Court otherwise orders, give such security as he would be required to give if letters of administration were granted to him under *The Surrogate Courts Act*. Security by person appointed. Rev. Stat. c. 94.

(3) The order may be made upon the application of any executor or administrator desiring to be relieved from the duties of the office; or of any executor or administrator complaining of the conduct of a co-executor or co-administrator, or of any person interested in the estate of the deceased. Who may apply.

(4) Subject to any rules to be made under *The Judicature Act* the practice in force for the removal of any other trustee shall be applicable to proceedings to be taken in the Supreme Court under this section. Procedure. Rev. Stat. c. 88.

(5) Where the executor or administrator removed is not a sole executor or administrator the Court need not, unless it sees fit, appoint any person to act in the room of the person removed, and if no such appointment is made the rights and estate of the executor or administrator removed shall pass to the remaining executor or administrator as if the person so removed had died. When new appointment unnecessary.

Chain of
representa-
tion.

(6) The executor of any person appointed an executor under this section shall not by virtue of such executorship be an executor of the estate of which his testator was appointed executor under this section, whether such person acted alone or was the last survivor of several executors.

Copy of
order to be
filed with
surrogate
clerk.

(7) A certified copy of the order of removal shall be filed with the surrogate clerk, and another copy with the registrar of the surrogate court by which probate or administration was granted, and such officers shall, at or upon the entry of the grant in the registers of their respective offices, make in red ink a short note giving the date and effect of the order, and shall also make a reference thereto in the index of the register at the place where such grant is indexed.

Endorse-
ment.

(8) The date of the grant shall be endorsed on the copy of the order filed with the surrogate clerk.

Jurisdiction
of surrogate
court.

(9) Where the estate is less than \$1,000, the jurisdiction conferred by this section may be exercised by the surrogate court. 1926, c. 40, s. 37.

RIGHTS AND LIABILITIES OF PERSONAL REPRESENTATIVES.

Actions by
executors
and
administra-
tors for
torts.

37.—(1) Except in cases of libel and slander, the executor or administrator of any deceased person may maintain an action for all torts or injuries to the person or to the property of the deceased in the same manner and with the same rights and remedies as the deceased would, if living, have been entitled to do; and the damages when recovered shall form part of the personal estate of the deceased.

Actions
against
executors
and adminis-
trators for
torts.

(2) Except in cases of libel and slander, if a deceased person committed a wrong to another in respect of his person or property, the person wronged may maintain an action against the executor or administrator of the person who committed the wrong.

Limitations
of actions.

(3) An action under this section shall not be brought after the expiration of one year from the death of the deceased. 1926, c. 40, s. 38.

[As to actions and distress for rent by personal representatives see The Landlord and Tenant Act, Rev. Stat. c. 190; and as to liability of personal representatives of a deceased joint contractor see The Mercantile Law Amendment Act, Rev. Stat. c. 161.]

Action of
account.
13 Edw. I.
(St. 1 West-
minster)
c. 23.

38. A personal representative shall have an action of account as the testator or intestate might have had if he had lived. 1926, c. 40, s. 39.

[As to assignment and discharge of mortgages by executors, etc., see The Mortgages Act, Rev. Stat. c. 140.]

39. An administrator with the will annexed or an executor to whom probate is granted shall have all the power conferred by the testator upon the executor named in his will and may in all respects act as effectually as though he alone had been named by the testator as his sole executor. 1926, c. 40, s. 40.

Powers of executor to whom probate granted.

Execution of Powers.

40. Where there is in a will a direction, express or implied, to sell, dispose of, appoint, mortgage, incumber or lease any land, and no person is by the will or otherwise by the testator appointed to execute and carry the same into effect the executor, if any, named in such will may execute and carry into effect every such direction in respect of such land, and any estate or interest therein in the same manner and with the same effect as if he had been appointed by the testator for that purpose. 1926, c. 40, s. 41.

Who may execute direction to sell, etc., where no other person is appointed.

41. Where from any cause a court of competent jurisdiction has committed to a person, who has given security to the satisfaction of such court for his dealing with such land and its proceeds, letters of administration with a will annexed which contains an express or implied power to sell, dispose of, appoint, mortgage, incumber or lease any land, whether such power is conferred on an executor named in the will or the testator has not by the will or otherwise appointed a person to execute it, the administrator may exercise the power in respect of such land in the same manner and with the same effect as if he had been appointed by the testator for that purpose. 1926, c. 40, s. 42.

Idem.

Or when no one named in the will to execute powers of sale, etc.

Contract of Deceased.

42. Where any person has entered into a contract in writing for the sale and conveyance of land, and such person has died intestate, or without providing by will for the conveyance of such land to the person entitled or to become entitled to such conveyance, if the deceased would be bound, were he alive, to execute a conveyance, his personal representative shall make and give to the person entitled to the same a good and sufficient conveyance of such land, of such nature as the deceased, if living, would be liable to give, but without covenants, except as against the acts of the grantor; and the conveyance shall be as valid and effectual as if the deceased were alive at the time of the making thereof, and had executed the same, but shall not have any further validity or effect. 1926, c. 40, s. 43.

Conveyance by personal representative in pursuance of a contract by deceased.

Devises in Trust.

Power to raise money by sale or mortgage to satisfy charges—notwithstanding want of express power in the will.
Imp. Act, 22-23 Vict. c. 35, s. 14.

43.—(1) Where, by any will coming into operation after the 18th day of September, 1865, a testator charges his land, or any specific part thereof, with the payment of his debts or with the payment of any legacy or other specific sum of money, and devises the land so charged to his executors or to a trustee without any express provision for the raising of such debt, legacy or sum of money out of such land, the devisee may raise such debt, legacy or money by a sale of such land or any part thereof, or by a mortgage of the same.

Purchaser's position.
Imp. Act, 22-23 Vict. c. 35, s. 17.

(2) Purchasers or mortgagees shall not be bound to inquire whether the powers conferred by this section, or any of them, have been duly and correctly exercised by the person acting in virtue thereof. 1926, c. 40, s. 44.

Duties and liabilities of an executor and administrator acting under the powers in this Act.

44. Every personal representative, as respects the additional powers vested in him by this Act, and any money or assets by him received in consequence of the exercise of such powers, shall be subject to all the liabilities, and compellable to discharge all the duties which, as respects the acts to be done by him under such powers, would have been imposed upon a person appointed by the testator, or would have been imposed by law upon any person appointed by law, or by any court of competent jurisdiction to execute such power. 1926, c. 40, s. 45.

Survivorship.

45. Where there are several personal representatives, and one or more of them shall die, the powers conferred upon them shall vest in the survivor or survivors, unless there is some provision to the contrary in the will. 1926, c. 40, s. 46.

EFFECT OF REVOCATION OF AN ERRONEOUS GRANT.

Validity of acts done prior to revocation of erroneous grant.

46.—(1) Where a court of competent jurisdiction has admitted a will to probate, or has appointed an administrator, notwithstanding that the grant of probate or the appointment may be subsequently revoked as having been erroneously made, all acts done under the authority of such probate or appointment, including all payments made in good faith to or by the personal representative, shall be as valid and effectual as if the same had been rightly granted or made; but upon revocation of the probate or appointment, in cases of an erroneous presumption of death, the supposed decedent, and in other cases the new personal representative may, subject to the provisions of subsections 2 and 3, recover from the person who acted under the revoked grant or appointment any part of the estate remaining in his hands undistributed and, subject to *The Limitations Act*, from any person who erroneously received any part of the estate as a devisee, legatee or one of the next of kin, or as a husband or wife of

Recovery of property.

Rev. Stat. c. 106.

the decedent or supposed decedent, the part so received or the value thereof.

(2) The person acting under the revoked probate or appointment may retain out of any part of the estate remaining in his hands undistributed his proper costs and expenses incurred in the administration. Expenses.

(3) Nothing in this section shall protect any person acting as personal representative where he has been party or privy to any fraud whereby the grant or appointment has been obtained, or after he has become aware of any fact by reason of which revocation thereof is ordered unless, in the latter case, he acts in pursuance of a contract for valuable consideration and otherwise binding made before he became aware of such fact. 1926, c. 40, s. 47. Fraud.

ADMINISTRATION OF ESTATES.

47.—(1) A personal representative may pay or allow any debt or claim on any evidence that he thinks sufficient. Power to pay debts.

(2) A personal representative, or two or more trustees acting together, or a sole acting trustee, where, by the instrument, if any, creating the trust, a sole trustee is authorized to execute the trusts and powers thereof may, if and as he or they may think fit, accept any composition or any security, real or personal, for any debt or for any property, real or personal, claimed, and may allow any time for payment for any debt, and may compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the testator's or intestate's estate or to the trust, and for any of these purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient without being responsible for any loss occasioned by any act or thing done by him or them in good faith. 1926, c. 40, s. 48. To compound, etc.

NOTE.—As to contested claims, see *Surrogate Courts Act*. Rev. Stat. c. 94.

48. On the administration of the estate of a deceased person, in the case of a deficiency of assets, debts due to the Crown and to the personal representative of the deceased person, and debts to others, including therein debts by judgment or order, and other debts of record, debts by specialty, simple contract debts, and such claims for damages as are payable in like order of administration as simple contract debts shall be paid *pari passu* and without any preference or priority of debts of one rank or nature over those of another; but nothing herein shall prejudice any lien existing during the lifetime of the debtor on any of his property. 1926, c. 40, s. 49. In case of deficiency of assets, debts to rank pari passu. Not to affect liens.

As to liability of executor or administrator in respect of, ... covenants, etc., in leases.
Imp. Act, 22-23 Vict. c. 35, s. 27.

49.—(1) Where a personal representative, liable as such to the rents, or upon the covenants or agreements contained in a lease or agreement for a lease granted or assigned to the testator or intestate has satisfied all liabilities under the lease or agreement for a lease, which accrued due and were claimed up to the time of the assignment hereinafter mentioned, and has set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised, or agreed to be demised, although the period for laying out the same may not have arrived, and has assigned the lease, or agreement for lease, to a purchaser thereof, he may distribute the residuary estate of the deceased to and among the parties entitled thereto, without appropriating any part or any further part thereof, as the case may be, to meet any future liability under such lease or agreement for lease.

No personal liability for subsequent claim.

(2) The personal representative so distributing the residuary estate shall not be personally liable in respect of any subsequent claim under the lease or agreement for lease.

Right to follow assets not affected.

(3) Nothing in this section shall prejudice the right of the lessor, or those claiming under him, to follow the assets of the deceased into the hands of the person or persons to or amongst whom they have been distributed. 1926, c. 40, s. 50.

As to liability of executor in respect of rents, etc., in conveyances on rent-charge, etc.
Imp. Act, 22-23 Vict. c. 35, s. 28.

50.—(1) Where a personal representative, liable as such to the rent or upon the covenants or agreements contained in any conveyance on chief rent or rent-charge, whether any such rent is by limitation of use, grant or reservation, or agreement for such conveyance, granted or assigned to or made and entered into with the testator or intestate, has satisfied all liabilities under the conveyance, or agreement for a conveyance, which accrued due and were claimed up to the time of the conveyance by him hereinafter mentioned, and has set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed, or agreed to be conveyed, although the period for laying out the same may not have arrived, and has conveyed such property, or assigned such agreement for conveyance to a purchaser thereof, he may distribute the residuary estate of the deceased to and amongst the persons entitled thereto, without appropriating any part, or any further part thereof, as the case may be, to meet any further liability under such conveyance or agreement for conveyance.

No personal liability for any subsequent claim.

(2) A personal representative so distributing the residuary estate shall not be personally liable in respect of any subsequent claim under the conveyance or agreement for conveyance.

Right of grantor, etc., to follow assets not affected.

(3) Nothing in this section shall prejudice the right of the grantor, or those claiming under him, to follow the assets of

the deceased into the hands of the person or persons to or amongst whom they have been distributed. 1926, c. 40, s. 51.

51.—(1) Where a trustee or assignee acting under the trusts of a deed or assignment for the benefit of creditors generally, or of a particular class or classes of creditors, where the creditors are not designated by name therein, or a personal representative has given such or the like notices as, in the opinion of the court in which such trustee, assignee, or personal representative is sought to be charged, would have been directed to be given by the Supreme Court in an action for the execution of the trusts of such deed or assignment, or in an administration suit, for creditors and others to send in to such trustee, assignee, or personal representative, their claims against the person for the benefit of whose creditors such deed or assignment is made, or against the estate of the testator or intestate, as the case may be, at the expiration of the time named in the notices, or the last of the notices, for sending in such claims, he may distribute the proceeds of the trust estate, or the assets of the testator or intestate, as the case may be, or any part thereof amongst the persons entitled thereto, having regard to the claims of which he has then notice, and shall not be liable for the proceeds of the trust estate, or assets, or any part thereof so distributed to any person of whose claim he had not notice at the time of the distribution.

Distribution of assets under trust deeds for benefit of creditors, or of the assets of intestate after notice given by trustee, assignee, executor or administrator.

(2) Nothing in this section shall prejudice the right of any creditor or claimant to follow the proceeds of the trust estate, or assets, or any part thereof into the hands of persons who have received the same.

Right of creditor to follow assets not affected.

(3) Subsection 1 shall not apply to heirs, next of kin, devisees or legatees claiming as such. 1926, c. 40, s. 52.

Subs. 1 not to apply to heirs, etc.

PROPERTY SUBJECT TO POWER, WHEN TO BE ASSETS.

52. Property over which a deceased person had a general power of appointment, which he might have exercised for his own benefit without the assent of any other person, shall be assets for the payment of his debts where the same is appointed by his will; and, under an execution against the personal representatives of such deceased person, such assets may be seized and sold after the deceased person's own property has been exhausted. 1926, c. 40, s. 53.

Exercise of general power by will, effect of.

3 W. & M. c. 14.

UNDISPOSED OF RESIDUE.

53.—(1) When a person dies having by will appointed an executor, such executor, in respect of any residue not expressly disposed of, shall be deemed to be a trustee for the person, if any, who would be entitled to the estate under *The Devolution of Estates Act* in case of an intestacy, unless it appears by the will that the executor was intended to take such residue beneficially.

Executor to be trustee of residue for next of kin. Rev. Stat. c. 148. Imp. Act, 11 Geo. IV, and 1 W. IV, c. 40, section 1.

Where there is no person entitled to the residue. Imp. Act, 11 Geo. IV, and 1 W. IV, c. 40, s. 2, Rev. Stat. c. 148.

(2) Nothing in this section shall prejudice any right in respect of any residue not expressly disposed of to which, if this Act had not been passed, an executor would have been entitled where there is not any person who would be entitled to the testator's estate under *The Devolution of Estates Act* 1926, c. 40, s. 54.

RIGHTS AND LIABILITY OF REPRESENTATIVES OF EXECUTORS AND ADMINISTRATORS.

Rights and liabilities of executors of executors.

54. Executors of executors shall have the same actions for the debts and property of the first testator as he would have had if in life; and shall be answerable for such of the debts and property of the first testator as they shall recover as the first executors would be if they had recovered the same. 1926, c. 40, s. 55.

See 25 Edw. III, Stat. 5, c. 5.

Liability of personal representative of one who commits waste. 30 Car. II, c. 7, s. 1. 4 W. and M. c. 24, s. 12.

55. The personal representative of any person who, as executor or as executor in his own wrong, or as administrator, wastes or converts to his own use any part of the estate of any deceased person shall be liable and chargeable in the same manner as his testator or intestate would have been if he had been living. 1926, c. 40, s. 56.

ESTATES OF INSOLVENT DECEASED PERSONS.

Creditor holding security to value the same.

56.—(1) On the administration of the estate of a deceased person, in case of a deficiency of assets, every creditor in proving his claim shall state whether he holds any security for his claim or any part thereof, and shall give full particulars of the same, and if such security is on the estate of the deceased debtor or on the estate of a third person for whom the estate of the deceased debtor is only indirectly or secondarily liable the creditors shall put a specified value on such security, and the personal representative, under the authority of the other creditors of the estate of the deceased, or of the court if the estate is being then administered under the direction of or by a court, may either consent to the creditor's ranking for the claim, after deducting such valuation, or may require from the creditor an assignment of the security at an advance of ten per centum upon the specified value to be paid out of the estate as soon as the personal representative has realized such security, in which he shall be bound to the exercise of ordinary diligence; and in either case the difference between the value at which the security is retained or taken, as the case may be, and the amount of the claim of the creditor shall be the amount for which he shall rank upon the estate of the deceased debtor.

When claim is based on negotiable instruments.

(2) If the claim of the creditor is based upon a negotiable instrument upon which the estate of the deceased debtor is only indirectly or secondarily liable, and which is not mature

or exigible, the creditor shall be considered to hold security within the meaning of this section, and shall put a value on the liability of the person primarily liable thereon, as his security for the payment thereof, but after the maturity of such liability and its non-payment he shall be entitled to amend and re-value his claim. 1926, c. 40, s. 57.

57. A creditor holding any such security on the estate of a deceased debtor, or on the estate of a third person for whom the estate of such debtor is only indirectly or secondarily liable, may release or deliver up such security to the personal representative, or he may, by statutory declaration delivered to the personal representative, set a value upon such security; and from the time he shall have so released or delivered up such security or valued the same the debt to which such security applied shall be considered as an unsecured debt of the estate, or as being secured only to the extent of the value set upon such security; and the creditor may rank as and exercise all the rights of an ordinary creditor for the amount of his claim, or to the extent only of so much thereof as exceeds the value set upon such security as the case may be. 1926, c. 40, s. 58.

Creditors holding security may assign same and rank as unsecured creditor.

58.—(1) Where a person claiming to be entitled to rank on the estate holds security for his claim, or any part thereof, of such a nature that he is required by this Act to value it, and he fails to value the same, the judge of the surrogate court who granted the probate or letters of administration may, upon summary application by the personal representative, of which application three days' notice shall be given to such claimant, order that unless a specified value shall be placed on such security and notified in writing to the personal representative within a time to be limited by the order such claimant shall, in respect of the claim, or the part thereof for which the security is held, be wholly barred of any right to share in the proceeds of such estate.

When creditor holding security fails to value same.

(2) If a specified value is not placed on such security and notified in writing to the personal representative according to the exigency of the order, or within such further time as the judge may allow, the claim or the part thereof, as the case may be, shall be wholly barred as against such estate.

Effect of neglect to comply with order.

(3) Where an estate is being administered by or under the direction of a court such court shall exercise the jurisdiction conferred by this section upon the judge of the surrogate court. 1926, c. 40, s. 59.

Administration under the direction of a court.

[As to priority in respect of wages, see *The Wages Act, Rev. Stat. c. 176.*]

SUMMARY APPLICATION TO COURT FOR ADVICE.

Trustee, etc., may apply for advice in management of trust property.

Imp. Act, 22-23 Vict. c. 35, s. 30.

Indemnity of trustee, etc., acting as advised.

59.—(1) A trustee, guardian or personal representative may, without the institution of an action, apply to the Supreme Court for the opinion, advice or direction of the Court on any question respecting the management or administration of the trust property or the assets of his ward or his testator or intestate.

(2) The trustee, guardian or personal representative acting upon the opinion, advice or direction given shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, guardian, or personal representative, in the subject matter of the application, unless he has been guilty of some fraud, wilful concealment or misrepresentation in obtaining such opinion, advice or direction. 1926, c. 40, s. 60.

ALLOWANCE TO TRUSTEES AND PERSONAL REPRESENTATIVES.

Allowance to trustees, etc.

60.—(1) A trustee, guardian or personal representative, shall be entitled to such fair and reasonable allowance for his care, pains and trouble, and his time expended in and about the estate, as may be allowed by a judge of the Supreme Court or by any master or referee to whom the matter may be referred.

Though estate not before the Court.

(2) The amount of such compensation may be settled although the estate is not before the Court in an action.

Allowance to executor or administrator for services.

(3) The judge of a surrogate court, in passing the accounts of a trustee or of a personal representative or guardian, may from time to time allow to him a fair and reasonable allowance for his care, pains and trouble, and his time expended in or about the estate.

Allowance to barrister or solicitor trustee for professional services.

(4) Where a barrister or solicitor is a trustee, guardian or personal representative, and has rendered necessary professional services to the estate regard may be had in making the allowance to such circumstance, and the allowance shall be increased by such amount as may be deemed fair and reasonable in respect of such services.

Where allowance fixed by the instrument.

(5) Nothing in this section shall apply where the allowance is fixed by the instrument creating the trust. 1926, c. 40, s. 61.

MISCELLANEOUS.

Trustees buying or selling. Rev. Stat. c. 153.

61. A trustee who is either a vendor or a purchaser may sell or buy without excluding the application of section 1 of *The Vendors and Purchasers Act*. 1926, c. 40, s. 62.

Indemnity.

62. This Act, and every order purporting to be made under it, shall be a complete indemnity to all persons for any acts done pursuant thereto. 1926, c. 40, s. 63.

Indemnity.
Imp. Acts,
15 and 16
Vict. c.
55, s. 7,
56-57 Vict.
c. 53, s. 49.

Note.—See also *The Judicature Act, Rev. Stat. c. 88.*

As to the protection of purchasers, see also section 56 of The Conveyancing Act, Rev. Stat. c. 137.

COSTS.

63. The Supreme Court may order the costs of and incidental to any application, order, direction, conveyance, assignment or transfer under this Act, or any part thereof, to be paid or raised out of the property in respect of which the same is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as the Court may deem proper. 1926, c. 40, s. 64.

Costs may be
ordered to be
paid out of
estate.

APPLICATION OF ACT.

64. Subject to section 65, unless otherwise expressed therein, the provisions of this Act shall apply to all trusts whenever created and to all trustees whenever appointed. 1926, c. 40, s. 65.

Application
of Act.

65. The powers, rights and immunities conferred by this Act are in addition to those conferred by the instrument creating the trust, and shall have effect subject to the terms thereof. 1926, c. 40, s. 66.

Additional
powers
given.

66. Nothing in this Act shall authorize a trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do by the instrument creating the trust. 1926, c. 40, s. 67.

Express
terms of
trust
instrument
to prevail.

CHAPTER 151.

The Public Trustee Act.

Office of
Public
Trustee.

1. There shall be a Public Trustee who shall be a corporation sole under that name with perpetual succession and an official seal, who may sue and be sued under his corporate name. 1927, c. 36, s. 2.

Qualification.

2. The Lieutenant-Governor in Council may appoint a member of the Bar of Ontario of not less than five years' standing, to be the Public Trustee, and may appoint such persons as officers, clerks and servants in the office of the Public Trustee, as may be necessary for the purposes of this Act. 1927, c. 36, s. 3.

Vacancy in
office.

3. In the event of the office becoming vacant, or if the Public Trustee is absent or ill, the Attorney-General shall be *ex officio* Public Trustee until another appointment is made, or until an acting trustee is appointed by Order-in-Council. 1927, c. 36, s. 4.

Salaries.

4. The salaries or other remuneration of the Public Trustee and of the officers, clerks and servants in his office shall be fixed by the Lieutenant-Governor in Council and may be payable out of such moneys as may be appropriated by the Legislature for that purpose, or out of any fund established under this Act, as the Lieutenant-Governor may from time to time direct. 1927, c. 36, s. 5.

Duties.

Rev. Stat.
cc. 104, 152.

5. The Public Trustee shall discharge the duties imposed upon him by *The Crown Administration of Estates Act*, *The Charities Accounting Act* and any other Act of the Legislature of this Province, or by any order of the Lieutenant-Governor in Council, and it shall also be his duty to make enquiries from time to time as to property which has escheated, or become forfeited for any cause to the Crown, or in which the Crown, as represented by the Province of Ontario, may be interested, and all persons shall furnish to the Public Trustee such information as he may require, and in default of so doing shall be liable to a penalty not exceeding \$100. 1927, c. 36, s. 6.

Powers in
conducting
inquiry.

Rev. Stat.
c. 20.

6. For the purposes of any inquiry under section 5 the Public Trustee shall have all the powers which may be conferred upon a commissioner under *The Public Enquiries Act*. 1927, c. 36, s. 7.

7.—(1) The Public Trustee, with his consent in writing, may be appointed trustee of any will or settlement or other instrument creating a trust or duty, in the same manner as if he were a private trustee. Acceptance and execution of trusts.

(2) The Public Trustee may be appointed sole trustee although the trust instrument contemplates two or more trustees, and any person who is a trustee with the Public Trustee may at any time retire from the trust upon passing his accounts and paying over the balance. 1927, c. 36, s. 8. May be appointed sole trustee.

8.—(1) Subject to the regulations, the Public Trustee shall make a charge for his services against every estate which shall come to his hand to be dealt with. Fees and charges.

(2) All fees, charges, and expenses which would be allowed to a private trustee shall be allowed to the Public Trustee and shall be collected and accounted for in such manner as may be prescribed by the regulations. 1927, c. 36, s. 9. To be allowed same fees as private trustee.

9.—(1) The fees, charges, and remuneration and refunds of all expenses and all income of the office of every description shall be paid by the Public Trustee into a separate account approved by the Lieutenant-Governor in Council and as prescribed by the regulations. Fees, charges, etc., to be paid into separate account.

(2) There shall be paid out of such fund the salaries or other remuneration, and the expenses of the Public Trustee and the officers, clerks and servants in his office. Payments out of fund.

(3) From any surplus in such fund there may be established an assurance fund as may be provided by the regulations. Establishment of fund.

(4) Notwithstanding anything contained in *The Crown Administration of Estates Act*, the Lieutenant-Governor in Council may direct that moneys coming to the hand of the Public Trustee under that Act or any part of the same, shall be placed to the credit of the special fund and applied to the purposes of subsection 2. Moneys received under Rev. Stat. c. 104.

(5) The Lieutenant-Governor in Council may from time to time direct the payment into the Consolidated Revenue Fund of any balance at the credit of the said fund. Payment over of balances.

(6) Payments into and out of the said fund shall be made in such manner and subject to such conditions as may be prescribed in the regulations. 1927, c. 36, s. 10. Manner of paying into and out of fund.

10. All sums required to discharge any liability for a loss which the Public Trustee, if he were a private trustee, would be personally liable to discharge, shall be made good out of the assurance fund or out of the Consolidated Revenue Fund, but neither the Public Trustee nor any of his officers nor the said fund shall be liable for any loss which would not have imposed liability upon a private trustee. 1927, c. 36, s. 11. Losses — how to be made good.

Charitable
and public
trusts.

11. The Public Trustee may accept and administer any charitable or public trust. 1927, c. 36, s. 12.

Regulations.

12. The Lieutenant-Governor in Council may make regulations,—

- (a) respecting the office of Public Trustee, and prescribing the trusts or duties he is authorized to accept or undertake under the provisions of this Act, and the security, if any, to be given by the Public Trustee and his officers;
- (b) for fixing the fees and charges in the office of the Public Trustee and the application and disposal of the same;
- (c) respecting the transfer to and from the Public Trustee of any property;
- (d) respecting the accounts to be kept and the auditing thereof;
- (e) for the establishment of an assurance fund for the purpose of meeting any losses for which the office of Public Trustee may be liable;
- (f) fixing the rate of interest to be allowed upon money in the hands of the Public Trustee and fixing the amount of interest to be charged upon advances made on behalf of any estate and concerning the investment of money held by him and the custody and control of security held by him for such investments;
- (g) for constituting a committee or board for the supervision of the investments or other dealings with property by the Public Trustee, and for providing for the remuneration by fees, or otherwise, of the members of such committee;
- (h) generally for the better carrying out of the provisions of this Act. 1927, c. 36, s. 13.

Committee
to be
visitors of
office of
Public Trustee

13.—(1) The committee or board constituted for the supervision of investments or other dealings with property by the Public Trustee under the clause lettered *g* in section 12 shall be visitors of the office of the Public Trustee.

Visitors
may make
suggestions.

(2) The visitors may make such suggestions and recommendations with regard to the management and conduct of the office of Public Trustee as they may deem advisable, with regard to the general policy of the office.

(3) The Public Trustee may consult with the visitors from time to time as to methods of administration, staff and other matters relating to the office.

Consultations as to method of administration.

(4) The visitors shall make an annual report to the Lieutenant-Governor in Council respecting the performance of their duties and the exercise of their powers under this section. 1927, c. 36, s. 14.

Annual report of visitors.

(NOTE.—*As to the duties of the Public Trustee with respect to the estates of patients in asylums, see Hospitals for the Insane Act. Rev. Stat. c. 353*).

CHAPTER 152.

The Charities Accounting Act.

Notice of
bequest or
donation to
be given to
Public
Trustee.

1.—(1) Where under the terms of a will or of any instrument in writing real or personal property or any right or interest therein or the proceeds thereof, have heretofore been or are hereafter given to or vested in any person as executor or trustee for any religious, educational, charitable or public purpose, or are to be applied by him to or for any such purpose, such person shall give written notice thereof, personally or by registered post, to the Public Trustee, and to the person, if any, designated in the will or instrument as the beneficiary under the bequest or gift, or as the person to receive the same from the executor or trustee. 1915, c. 23, s. 2 (1); 1919, c. 32, s. 5; 1921, c. 47, s. 8 (1).

Time for
giving
notice.

(2) Where the will or instrument has taken effect before the passing of this Act the notice shall be given within one month after the passing of this Act, and in other cases, in the case of an instrument other than a will within one month after it shall have been executed and in the case of a will within the same period after the death of the testator.

When
notice
not
necessary.

(3) No notice under this section shall be necessary where the trust has been completely executed before the 31st day of March, 1914, but the remaining sections of this Act shall nevertheless apply to every such trust. 1915, c. 23, s. 2 (2, 3).

Contents of
notice.

2. The notice shall state the nature of the property coming into the possession or under the control of the executor or trustee and shall be accompanied by an attested copy of the will or other instrument. 1915, c. 23, s. 3.

Executor or
trustee to
furnish in-
formation
to Public
Trustee.

3. Every such executor or trustee shall furnish to the Public Trustee from time to time such information as to the condition or disposition of the property devised, bequeathed or given, and such other particulars, and in such form as may be required by the rules made under this Act. 1915, c. 23, s. 4; 1919, c. 32, s. 5; 1921, c. 47, s. 8 (2).

Auditing
accounts as
to charit-
able legacies
or grants.

4. Whenever required so to do by the Public Trustee, the executor or trustee shall submit the accounts of his dealings with all the property coming to his hands or under his control under the terms of the disposition, bequest or gift, to be passed and examined and audited by the judge of the surrogate court

of the county or district in which he resides or in which probate was granted. 1915, c. 23, s. 5; 1919, c. 32, s. 5; 1921, c. 47, s. 8 (3).

5. If any such executor or trustee,—

- (a) refuses or neglects to comply with any of the provisions of sections 1 to 4, or with any of the rules made under this Act; Application to Supreme Court where executor or trustee in default.
- (b) is found to have misapplied or misappropriated any property or fund coming to his hands for the purposes mentioned in section 1;
- (c) has made any improper or unauthorized investment of any moneys forming part of the proceeds of any such property or fund; or
- (d) is not applying any property, fund or moneys in the manner directed by the will or instrument,

a judge of the Supreme Court sitting in Chambers upon the application of the Public Trustee made by way of originating notice according to the practice of the Court, may make an order Application to judge in chambers.

- (e) directing the executor or trustee to do forthwith or within the time stated in the order anything which he has refused or neglected to do in compliance with sections 1 to 4, or with the rules made under this Act; Order—contents of.
- (f) requiring the executor or trustee to pay into court any funds in his hands and to assign and transfer to the Accountant of the Supreme Court or to a new trustee appointed under clause *g*, any property or securities in his hands or under his control, for any of the purposes mentioned in section 1;
- (g) removing such executor or trustee and appointing some other person to act in his stead;
- (h) directing the issue of an attachment against the executor or trustee to the amount of any property or funds as to which he is in default;
- (i) fixing the costs of the application and directing how and by whom they shall be payable;
- (j) giving such directions as to the future investment, disposition and application of any such property, funds or moneys as he may deem just and best calculated to carry out the intentions of the testator or donor;

- (k) imposing such penalty by way of fine, or imprisonment not exceeding twelve months, upon the executor or trustee for any such default or misconduct, or for disobedience to any order made under this section;

Powers of court as to appointing trustee of charitable bequest.

- (l) appointing an executor or trustee in place of any executor or trustee who has died, or has ceased to act, or has been removed, or has gone out of Ontario, notwithstanding that the will or other instrument creating the trust confers the power to make such an appointment upon another executor or trustee or upon any other person. 1915, c. 23, s. 6; 1916, c. 24, s. 50; 1919, c. 32, s. 5; 1921, c. 47, s. 8 (4).

Rules—what to include.

6.—(1) The Lieutenant-Governor in Council may make rules,—

- (a) prescribing forms of notices and returns to be made under this Act;
- (b) respecting the practice and procedure upon passing the accounts of an executor or trustee under this Act and the tariff of fees and costs to be applicable thereto;
- (c) requiring returns to be made by any such executor or trustee to any department of the Government and the form of such returns;
- (d) regulating the practice and procedure upon any application under section 5;
- (e) generally for the better carrying out of the provisions of this Act. 1915, c. 23, s. 7 (1); 1921, c. 47, s. 8 (5).

Promulgation of rules.

(2) The rules shall be published in the *Ontario Gazette* and shall come into force and take effect from a date to be fixed by the Lieutenant-Governor in Council.

Practice.

(3) Except as otherwise provided by the rules the practice and procedure of the Supreme Court and of the surrogate courts shall respectively apply to proceedings under this Act. 1915, c. 23, s. 7 (2, 3).

When surrogate registrar to transmit copy of will to Public Trustee.

(4) Where an application is made for letters probate of any will or other testamentary instrument whereby real or personal property or any right or interest therein or proceeds therefrom are given to or vested in any person as executor or administrator for any religious, educational, charitable or other purpose or are to be applied by him to or for any such purpose, the surrogate registrar shall transmit a copy of such will or other instrument to the Public Trustee.

(5) Where an action or other proceeding is brought to set aside, vary or construe any such will or other instrument, written notice thereof shall be served upon the Public Trustee, and if no one appears as representing the religious, educational, charitable or other public institution, or if there is no named beneficiary, or a discretion is given to the executor or trustee as to a choice of beneficiaries, the Public Trustee may intervene in such proceedings and shall have the right to object or consent and to be heard upon any argument as a party to such action or proceeding. 1921, c. 47, s. 8 (6).

Notice of
action to
set aside
will to be
served on
Public
Trustee.

7. This Act shall apply notwithstanding any provision in any will or other instrument excluding such application, or giving to an executor or trustee any discretion as to the application of property, funds or the proceeds thereof to religious, educational, charitable or public purposes. 1915, c. 23, s. 8.

Application
of Act.

8. This Act shall not apply to or affect or in any way interfere with any right or remedy which any person may have under any other Act or in equity or at common law or otherwise. 1915, c. 23, s. 9.

Other rights
and remedies
not
affected.

4. CONFIRMATION AND EVIDENCE OF TITLE.

CHAPTER 153.

The Vendors and Purchasers Act.

Rights of
vendors and
purchasers in
contracts of
sale of lands.

1. In the completion of a contract of sale of land the rights and obligations of the vendor and the purchaser shall, subject to any stipulation in such contract to the contrary, be regulated by the following rules:—

Recitals, etc.,
20 years old,
of facts, etc.,
prima facie
evidence.

(a) Recitals, statements and descriptions of facts, matters and parties contained in statutes, deeds, instruments or statutory declarations twenty years old at the date of the contract, unless and except in so far as they are proved to be inaccurate, shall be sufficient evidence of the truth of such facts, matters and descriptions.

Memorials
of discharged
mortgages.

(b) A registered memorial of a discharged mortgage shall be sufficient evidence of the mortgage without the production of the mortgage, unless and except in so far as such memorial is proved to be inaccurate; and the vendor shall not be bound to produce the mortgage unless it is in his possession or power.

Memorials
20 years old,
when, and of
what, evi-
dence.

(c) A registered memorial twenty years old of any other instrument, if the memorial purports to be executed by the grantor, or in other cases if possession has been consistent with the registered title, shall be sufficient evidence without the production of the instrument to which the memorial relates, unless and except in so far as such memorial is proved to be inaccurate; and the vendor shall not be bound to produce the original instrument unless it is in his possession or power; and the memorial shall be presumed to contain all the material contents of the instrument to which it relates.

Inability to
furnish cove-
nant to pro-
duce and fur-
nish docu-
ments of title.

(d) The inability of the vendor to furnish the purchaser with a legal covenant to produce and furnish copies of documents of title, shall not be an objection to the title if the purchaser will, on the completion of the contract, have an equitable right to the production of such documents. R.S.O. 1914, c. 122, s. 2.

2. In an action it shall not be necessary to produce any evidence which, by section 1 is dispensed with as between vendor and purchaser; and the evidence therein declared to be sufficient as between vendor and purchaser shall *prima facie* be sufficient for the purposes of such action. R.S.O. 1914, c. 122, s. 3.

Evidence in actions.

3. A vendor or purchaser of real or leasehold estate or his representative may, at any time and from time to time, apply in a summary way to the Supreme Court or a judge thereof in respect of any requisition or objection or any claim for compensation, or any other question arising out of or connected with the contract, except a question affecting the existence or validity of the contract; and the Court or judge may make such order upon the application as appears just, and refer any question to a master or other officer for enquiry and report. R.S.O. 1914, c. 122, s. 4.

Summary applications to Supreme Court in respect to requisitions, objections or compensation etc.

4. Every contract for the sale and purchase of land shall, unless otherwise stipulated, be deemed to provide that, —

Terms of agreement of sale and purchase.

- (a) the vendor shall not be bound to produce any abstract of title, deed, copies of deeds or other evidence of title except such as are in his possession or control;
- (b) the purchaser shall search the title at his own expense and shall make his objections thereto in writing within thirty days from the making of the contract;
- (c) the vendor shall have thirty days in which to remove any objection made to the title, but if he is unable or unwilling to remove any objection which the purchaser is not willing to waive, he may cancel the contract and return any deposit made but shall not be otherwise liable to the purchaser;
- (d) taxes, local improvement rates, insurance premiums, rents and interest, shall be adjusted as at the date of closing; 1926, c. 41, s. 2, *part*.
- (e) the conveyance shall be prepared by the vendor and the mortgage, if any, by the purchaser and the purchaser shall bear the expense of registration of the deed and the vendor shall bear the expense of the registration of the mortgage if any; 1926, c. 41, s. 2, *part*; 1927, c. 37, s. 2.
- (f) the purchaser shall be entitled to possession or the receipt of rents and profits upon the closing of the transaction. 1926, c. 41, s. 2, *part*.

CHAPTER 154.

The Quieting Titles Act.

Owners, etc.,
in fee simple
may obtain
judicial inves-
tigation of
title.

1. An owner of an estate in fee simple in land or a trustee for the sale of the fee simple shall be entitled to have his title judicially investigated and the validity thereof ascertained and declared, whether he has the legal estate or not, and whether his title is or is not subject to any charge or incumbrance. R.S.O. 1914, c. 123, s. 2.

In case of any
other estate;
investigation
to be discre-
tionary with
the judge.

2. Any other person who has any estate or interest in land may apply for the investigation of his title and a declaration of the validity thereof; but it shall be in the discretion of the judge before whom the proceedings are taken to grant or refuse the application and such discretion may be invoked and exercised at any stage of the proceedings, and the decision of the judge in exercising such discretion shall be subject to appeal. R.S.O. 1914, c. 123, s. 3.

Attorney-
General may
apply to quiet
title to Crown
lands.

3. His Majesty's Attorney-General for Canada or His Majesty's Attorney-General for Ontario may apply for an investigation of the title of the Crown to any land and a declaration of the validity thereof, and the application may be made by information instead of petition, but in other respects the practice and procedure shall be the same as in ordinary cases. R.S.O. 1914, c. 123, s. 4.

Procedure.

Form of appli-
cation and to
whom.

4. Every application shall be made to the Supreme Court or a judge thereof and, subject to the provisions of section 3, shall be by petition, Form 1. R.S.O. 1914, c. 123, s. 5.

How the appli-
cation must be
supported.

5. The application shall be supported by the following particulars,—

Title deeds.

(a) the title deeds, if any, and evidences of title in the possession or power of the applicant;

Registered
instruments.

(b) certified copies of all registered instruments, or registered memorials of instruments, affecting the land, or of all since the last judicial certificate, if any, under this Act, up to the time of the granting of the certificate of title;

Registrar's
certificate.

(c) an abstract of the title certified by the registrar of the registry division in which the land lies, unless the same be dispensed with in whole or in part.

- (d) a concise statement of such facts as are necessary to make out the title which do not appear in the produced documents; but no abstract of produced documents shall be required except on special grounds; Statement of facts.
- (e) proof of any fact which is required to be proved in order to make out the title, and which is not established by the produced documents, unless the Judge dispenses with such proof until a future stage of the investigation; Proof of facts.
- (f) an affidavit or deposition by the person whose title is to be investigated and a certificate of his counsel or solicitor, to the effect hereinafter mentioned, unless the Judge, for special reason, dispenses therewith; Affidavit and certificate of counsel, etc.
- (g) a schedule of the particulars produced under this section. R.S.O. 1914, c. 123, s. 6. Schedule of particulars produced.

6.—(1) The affidavit or deposition of the person whose title is to be investigated shall state that to the best of his knowledge and belief he is the owner of the estate or interest claimed by the petitioner, subject only to the charges and incumbrances set forth in the petition or in a schedule thereto, or that there is no charge or incumbrance affecting the land; that the deeds and evidences of title which he produces, and of which a list is contained in the schedule produced under the next preceding section, are all the title deeds and evidences of title relating to the land in his possession or power, and that he is not aware of the existence of any claim adverse to or inconsistent with his own to any part of the land or to any interest therein; or, if he is aware of such adverse claim, he shall set forth every such adverse claim, and shall depose that he is not aware of any except what he sets forth. What the affidavit or deposition of the applicant must state. As to adverse claims of possession, etc.

(2) The affidavit or deposition shall also set forth whether any one is in possession of the land and under what claim, right or title; and shall state that to the best of the deponent's knowledge, information and belief, the affidavit or deposition and the other papers produced therewith fully and fairly disclose all facts material to the title claimed by the petitioner, and all contracts and dealings which affect the same or any part thereof or give any right as against him. As to petitioner's possession and other material facts

(3) The affidavit or deposition may be dispensed with, or may be made by some other person instead of the person whose title is to be investigated, or an affidavit or deposition as to part may be made by one person, and as to part by another, in the discretion of the judge to whom the application is made; and in such case the affidavit shall be modified accordingly. R.S.O. 1914, c. 123, s. 7. In certain cases it may be dispensed with or made by another person.

What the certificate of counsel or solicitor must state.

7. The certificate of the counsel or solicitor shall state that he has investigated the title and believes the petitioner to be the owner of the estate which he claims in the land, subject only to any charge or incumbrance set forth in the petition or in the schedule thereto, or that he so believes, subject to any condition, qualification or exemption set forth in the certificate; and that he has conferred with the deponent on the subject of the various matters set forth in the affidavit or deposition referred to in the next preceding two sections and believes the affidavit or deposition to be true. R.S.O. 1914, c. 123, s. 8.

On what evidence judge may proceed.

8.—(1) The judge in investigating the title may receive and act upon any evidence that is received by the Supreme Court on a question of title, and any evidence which the practice of conveyancers authorizes to be received on an investigation of a title out of court; or any other evidence, whether the same is or is not receivable or sufficient in point of strict law or according to the practice of conveyancers, if the same satisfies the judge of the truth of the facts intended to be established thereby.

Evidence in proceedings to quiet titles. Rev. Stat. c. 153.

(2) It shall not be necessary to produce any evidence which by *The Vendors and Purchasers Act* is dispensed with as between vendor and purchaser, or to produce or account for the originals of any registered deeds, documents or instruments, unless the judge otherwise directs.

Form of proofs.

(3) The proof may be by affidavit or certificate or may be given orally or in any other manner or form satisfactory to the judge. R.S.O. 1914, c. 123, s. 9.

Taxes must have been paid except for current year.

9. Before a certificate of title is granted satisfactory evidence shall be given by certificate, affidavit or otherwise, that all taxes, rates and assessments for which the land is liable have been paid, or that all, except those for the current year, have been paid. R.S.O. 1914, c. 123, s. 10.

Further proof if judge not satisfied.

10. If the judge is not satisfied with the evidence of title produced in the first instance he shall give a reasonable opportunity to produce further evidence or to remove defects in the evidence produced. R.S.O. 1914, c. 123, s. 11.

Judge to order notice to be published.

11.—(1) Except as hereinafter provided, before a certificate of title is granted or a conveyance is made under this Act, the judge shall direct to be published in the *Ontario Gazette*, and if he sees fit in one or more newspapers, and in such form, and for such period as he deems expedient, a notice either of the application having been made, or of the order or decision of the judge thereon, and the notice shall state the time within which adverse claims may be filed; and the certificate or conveyance shall not be signed or executed

until after the expiration of at least four weeks from the first publication of such notice or such other period as the judge may appoint.

(2) Where the value of the land is proved to the satisfaction of the judge to be not more than \$3,000, he may dispense with the publication of the notice and in lieu thereof may direct that for such period as he may think fit a printed or type-written notice of the application, or of the order or decision of the judge thereon, be posted up in one or more conspicuous places on the land, and in such other place, if any, as he may think fit; and the certificate or conveyance shall not be signed or executed until the period limited by such notice for filing adverse claims shall have expired. R.S.O. 1914, c. 123, s. 12.

Notice of application where land is valued at not more than \$3,000.

12. Where the judge is satisfied respecting the title, and considers that the certificate of title can safely be granted or the conveyance can be safely executed without any other notice of application than the published or posted notice, he may grant the certificate or direct the execution of the conveyance. R.S.O. 1914, c. 123, s. 13.

Judge may grant certificate without further notice.

13. Where it appears that there is any person who may have a claim adverse to or inconsistent with that of the petitioner to or in respect of any part of the land, the judge shall direct such notice as he deems necessary to be mailed to or served on such person, his agent or solicitor. R.S.O. 1914, c. 123, s. 14.

Notice to adverse claimant.

14.—(1) Where it appears that any persons who will become the heirs of a living person or that any person not in esse may be interested in opposing the claim of the petitioners, the judge may appoint a guardian *ad litem* to represent them and they shall be bound by the adjudication.

Appointment of guardian ad litem.

(2) The judge may order that the costs of the guardian *ad litem* be paid by the petitioner.

Costs.

(3) Unless the judge otherwise directs, the Official Guardian shall be appointed guardian *ad litem*. R.S.O. 1914, c. 123, s. 15.

Who may be guardian.

15. Before granting the certificate or directing the execution of the conveyance the judge may require any further publication to take place, or any other notice to be mailed or served which he deems necessary. R.S.O. 1914, c. 123, s. 16.

Further publication or service of notice.

16.—(1) Any person having an adverse claim, or a claim not recognized in the petition may at any time before the certificate is granted or the conveyance is executed, file and serve on the petitioner, his solicitor or agent, a statement of his claim, Form 2.

Adverse claimants to file statements.

Verification. (2) The claim shall be verified by an affidavit to be filed therewith. R.S.O. 1914, c. 123, s. 17.

In case of contest, judge may decide or refer the case. **17.** In case of a contest, the judge may either decide the question of title on the evidence before him, or may refer the same or any matter involved therein to a divisional court, or may direct any mode of investigation which he deems expedient, and may defer granting the certificate or directing the execution of the conveyance. R.S.O. 1914, c. 123, s. 18.

Security for costs. **18.** The judge may at any stage of the proceeding order security for costs to be given by the petitioner, or by any person making an adverse claim. R.S.O. 1914, c. 123, s. 19.

Payment of costs. **19.** The judge may order costs either as between party and party, or as between solicitor and client, to be paid by or to any party to any proceeding, and may give directions as to the fund out of which any costs shall be paid. R.S.O. 1914, c. 123, s. 20.

Withdrawal of application. **20.** The petitioner may by leave of the judge withdraw his application at any time before final adjudication, on payment of all costs incurred in the investigation, either by himself or by any adverse claimant. R.S.O. 1914, c. 123, s. 21.

Petition may be referred to Master or counsel. **21.** Subject to Rules of Court, the judge may refer a petition or any question arising in the course of any proceeding thereon to any referee of titles or other officer of the court, or to counsel named by the judge, who shall proceed as the judge himself should do, had the reference not been made, and shall have all the powers of the judge, except the power to grant the certificate or to direct the execution of the conveyance. R.S.O. 1914, c. 123, s. 22.

Claims of title to be presumed to be made with certain exceptions. **22.**—(1) Every claim of title under this Act shall be presumed to be subject to the following exceptions and qualifications unless the petition expressly states the contrary:

- (a) the reservations, if any, contained in the original grant from the Crown;
- (b) any municipal charges, rates or assessments theretofore imposed for local improvements and not yet due and payable;
- (c) any title or lien which, by possession or improvements or other means, the owner or person interested in any adjoining land has acquired to or in respect of the land;

- (d) any lease or agreement for a lease for a period yet to run, not exceeding three years, where there is actual occupation under the same;
- (e) any public highway, right of way, watercourse and right of water, and other easement;
- (f) any right of the wife or husband of the petitioner to dower or curtesy.

(2) If the petitioner desires the certificate to declare the title to be free from such exceptions or qualifications, or any of them, the petition shall so state, and the investigation shall proceed accordingly, but this subsection shall not apply to the exception or qualification as to a public highway. R.S.O. 1914, c. 123, s. 23.

CERTIFICATE OF TITLE.

23. The judge may give one certificate of title comprising all the land mentioned in the petition, or may give separate certificates as to separate parts of the land. R.S.O. 1914, c. 123, s. 24. One certificate or several.

24. The certificate of title, Form 3, shall be under the seal of the court and shall be signed by a judge and, where the proceedings on the petition are conducted in Toronto, by the Referee of Titles and in other cases by the Inspector of Titles and shall also be signed by the Registrar or an Assistant Registrar of the Supreme Court, and the same and the schedule, if any, thereto or a duplicate or counterpart of the same shall be registered in full both in the Supreme Court and in the registry office of the registry division where the land lies without any further proof thereof. R.S.O. 1914, c. 123, s. 25.

25. A certificate of the registration in the Supreme Court may be endorsed on the certificate of title, or on any counterpart or certified copy thereof, thus: Registration
of certificate.

“Registered in _____ 19____, _____ Book _____
Page _____, _____
_____ A.H.,
Clerk of Records and Writs (or as the case may be.)

and a memorandum or certificate so signed shall be evidence of the registration mentioned therein. R.S.O. 1914, c. 123, s. 26.

26. The certificate of title, sealed, signed and registered as required by section 24, shall be conclusive, and the title therein mentioned shall be deemed absolute and indefeasible, on and from the date of the certificate, as regards His Majesty and all persons whomsoever, subject only to any

Effect of certificate of title.

charges or incumbrances, exceptions or qualifications mentioned therein or in the schedule thereto, and shall be conclusive evidence that every application, notice, publication, proceeding, consent and act which ought to have been made, given and done before the granting of the certificate, has been made, given and done by the proper person. R.S.O. 1914, c. 123, s. 27.

Certified copy
of certificate
to be evidence.

27. After a certificate of title is registered a copy thereof purporting to be signed and certified as a copy by the Registrar or an Assistant Registrar of the Supreme Court, or by the registrar of the registry division in which the land lies, shall be admissible evidence of the certificate for all purposes without further evidence of such copy, and without accounting for the non-production of the certificate. R.S.O. 1914, c. 123, s. 28.

Conveyance
by the Court
in case of sale.

28. In case of a sale by the Supreme Court the Court may investigate the title with a view to granting an indefeasible title, and in that case a conveyance, Form 4, executed to the purchaser, under the seal of the Court and purporting to be under the authority of this Act, shall have the same effect as a certificate. R.S.O. 1914, c. 123, s. 29.

Where an
indefeasible
title is con-
tracted for.

29. Where judgment is given for the specific performance of a contract for the sale of land and it is provided by the contract that the vendor shall give an indefeasible title, the court may make the like investigation, and the conveyance may be according to Form 4. R.S.O. 1914, c. 123, s. 30.

JUDICIAL INVESTIGATION OF PARTICULAR FACTS AFFECTING TITLES.

Right to judi-
cial investiga-
tion of some
fact which
may affect a
title.

30. Where a person domiciled or claiming land in Ontario desires to establish that he is the legitimate child of his parents, or that the marriage of his father or mother or of his grandfather and grandmother was a valid marriage, or that his own marriage was a valid marriage, or that he is the heir or one of the heirs of any person deceased, or that he is a natural born subject of His Majesty, he may, if the court thinks fit, have any of such matters judicially investigated and declared. R.S.O. 1914, c. 123, s. 31.

Application.

How the peti-
tion must be
supported.

31.—(1) The application shall be by petition supported by an affidavit of the petitioner verifying the statements of the petition, and stating that his claim is not disputed or questioned by any person; or, if his claim is to his knowledge disputed or questioned, the facts in relation to such dispute or question, and that he is not aware of any dispute or question except what he has set forth, and stating such other facts as may satisfy the court of the propriety of proceeding with the investigation.

(2) The proceedings upon the petition shall be the same as nearly as may be as in cases under section 1, and the certificate granted on the investigation shall be registered in the same way, and may be proved by the like evidence, as in the case of a certificate granted under section 12.

Investigation,
proof, etc., in
such case.

(3) The certificate when registered shall be conclusive and indefeasible in favour of the person to whom the same was granted and all persons claiming by, from, through or under him as regards His Majesty and all persons whomsoever and shall be *prima facie* evidence in favour of all other persons as against His Majesty and all persons whomsoever of the truth of the fact therein declared. R.S.O. 1914, c. 123, s. 32.

Effect of cer-
tificate.

EFFECT OF FRAUD IN OBTAINING CERTIFICATE.

32. If in the course of any proceeding any person acting either as principal or agent knowingly and with intent to deceive makes or assists or joins in or is privy to the making of any material false statement or representation, or suppresses, withholds or conceals, or assists or joins in or is privy to the suppression, withholding, or concealing from the court of any material document, fact or matter of information, any certificate or conveyance obtained by means of such fraud or falsehood, shall be null and void except as against a purchaser for valuable consideration without notice. R.S.O. 1914, c. 123, s. 33.

Certificate
obtained by
fraud.

RE-INVESTIGATION.

33.—(1) After a certificate is granted or a conveyance is executed any person aggrieved thereby may, on petition, and after satisfactorily accounting for his delay, by leave of the court or a judge, have the title or claim re-investigated on such terms as may be deemed just.

Re-investiga-
tion, petition
for

(2) A certificate of the presentation of the petition shall be registered in the proper registry office.

Registration.

(3) No proceeding on such petition shall affect the title of any person who, after the date of the certificate or conveyance under this Act and before the registration of the certificate of the presentation of the petition, has acquired by sale, mortgage, or contract, for valuable consideration, any estate or interest in the land described in the certificate or conveyance or, if the certificate was granted under section 30, in any land or other property, the title to which was derived from, through or under the person named in the certificate, in the character which is thereby declared to belong to him.

But those who
have pur-
chased, etc., in
the meantime
not to be
affected.

(4) The court or judge may make such order on the petition as he may deem just having regard to the provisions of the next preceding subsection and of section 32. R.S.O. 1914, c. 123, s. 34.

What order
may be made.

APPEALS.

Appeals.

34. An appeal shall lie from an order or decision of a judge under this Act to a divisional court in the same manner and subject to the same restrictions as in the case of an appeal from a judgment or order of a Judge of the High Court Division in an action. R.S.O. 1914, c. 123, s. 35.

MISCELLANEOUS.

Register to be kept.

35. A separate book shall be kept in the Supreme Court for the registration of certificates and conveyances under this Act, and the certificates and conveyances registered therein shall be numbered in order, and an index to the book shall be kept in such form as the Court may direct. R.S.O. 1914, c. 123, s. 36.

Where any party is a minor, lunatic, etc.

36. Where any person who, if not under disability, might have made any application, given any consent, or done any act, or been party to any proceedings under this Act, is an infant, an idiot or a lunatic the guardian of the infant, or committee of the estate of the idiot or lunatic, may make such application, give such consent, do such act, and be party to such proceeding as such person might if free from disability, and shall otherwise represent such person for the purposes of this Act; and if the infant has no guardian, or the idiot or lunatic no committee of his estate, the Court or Judge may appoint a person with like power to act for the infant, idiot or lunatic. R.S.O. 1914, c. 123, s. 37.

Married women.

37. A married woman shall, for the purposes of this Act, be deemed a *feme sole*. R.S.O. 1914, c. 123, s. 38.

No objection to proceeding to establish title that petitioner should first have brought an action.

38. No objection to a petition shall be allowed upon the ground that the petitioner should first have brought an action, and if it appears upon the determination of the investigation that the petitioner is entitled to the possession of the land he may obtain an order against any other party to the proceeding for the delivery of possession thereof. R.S.O. 1914, c. 123, s. 39.

Proceedings not abated by certain events.

39. Proceedings shall not abate or be suspended by any death or transmission or change of interest, but in any such event the court or a judge may require notices to be given to persons becoming interested, or may make any order for discontinuing, or suspending, or carrying on the proceedings, or otherwise, in relation thereto as may seem just. R.S.O. 1914, c. 123, s. 40.

40. No petition, order, affidavit, certificate, registration or other proceeding shall be invalid by reason of any informality or technical irregularity therein, or of any mistake not affecting the substantial justice of the proceeding. R.S.O. 1914, c. 123, s. 41.

Proceedings
not void for
want of form.

41.—(1) There shall be an Inspector of Titles who shall supervise the work of the Local Referees of Titles.

Inspector of
Titles.

(2) Such officer of the Supreme Court as may be designated for that purpose by Rule of Court shall be the Inspector of Titles. R.S.O. 1914, c. 123, s. 42.

42. Every Local Master shall be Local Referee of Titles and the Inspector of Titles shall be the Referee of Titles where the proceedings under the petition are to be conducted at Toronto. R.S.O. 1914, c. 123, s. 43.

Referees of
Titles.

43. The Inspector of Titles, the Referee of Titles and every Local Referee of Titles in respect of the petition and the proceedings thereunder shall have the like powers as the Master in Chambers. R.S.O. 1914, c. 123, s. 44.

Powers of In-
spector and
Referees.

44. The Referee of Titles and every Local Referee of Titles shall have the same powers as a Judge of the Supreme Court within the limits prescribed by the Rules. R.S.O. 1914, c. 123, s. 45.

Powers of
Referee of
Titles.

45. Subject to Rules of Court, unless where otherwise provided, the practice and procedure under *The Judicature Act* and Rules made thereunder shall apply to proceedings under this Act. R.S.O. 1914, c. 123, s. 46.

Application of
Judicature
Act, Rev.
Stat. c. 88.

46.—(1) The Judges authorized under *The Judicature Act* may make Rules for referring petitions under this Act to any Referee of Titles or other officer of the Court, or to any counsel or other person and may regulate the fees to be paid on such references.

Court may
make General
Rules for car-
rying out this
Act.
Rev. Stat.
c. 88.

(2) The Judges may also make Rules for the purposes of and for regulating the practice or procedure under this Act notwithstanding that the practice or procedure prescribed by this Act may be thereby varied. R.S.O. 1914, c. 123, s. 47.

R.S.O. 1914, c. 123, Form 2.

FORM 3.

CERTIFICATE.

In the Supreme Court of Ontario.

These are to certify under the authority of *The Quieting Titles Act*, that A.B., of _____, is the legal and beneficial owner in fee simple in possession (or as the case may be) of all, etc. (here describe the land) subject to the exceptions and qualifications mentioned in section 22 of the said Act (or as the case may be), and to (specifying either by reference to a schedule or otherwise any of the charges or incumbrances, exceptions or qualifications to which the title of A.B. is subject), but free from all other rights, interests, claims and demands whatever.

[Or that (stating the facts found and declared under section 30, and stating on whose application the same are declared)].

In witness whereof _____ one of the Justices of the Court has hereunto set his hand, and the seal of the Court has been hereunto affixed, this _____ day of _____ 19 _____.

G.S.H.,

J.A.B.

[L.S.]

Inspector (or Referee) of Titles.

R.S.O. 1914, c. 123, Form 3.

FORM 4.

CONVEYANCE BY THE SUPREME COURT.

The Supreme Court of Ontario, under the authority of *The Quieting Titles Act*, doth hereby grant unto A.B., of _____ [here describe the land sold] to hold the same unto the said _____ in fee simple (or as the case may be), subject to [here specify as in the case of a certificate of title].

In witness whereof _____ one of the Justices of the Court has hereunto set his hand, and the seal of the Supreme Court has been hereunto affixed, this _____ day of _____, 19 _____.

G.S.H.,

J.A.B.

[L.S.]

Registrar.

R.S.O. 1914, c. 123, Form 4.

CHAPTER 155.

The Registry Act.

Interpreta-
tion.

1. In this Act,

"Certificate of
amalgamation
of loan cor-
porations."

Rev. Stat.
c. 223.

(a) "Certificate of amalgamation of loan corporations" shall include a copy certified under the hand of the Registrar of Loan Corporations of the certificate of assent and declaration referred to in section 61 of *The Loan and Trust Corporations Act* and of any document mentioned in such certificate and a certificate issued for the purpose of registration under any Act of this Legislature authorizing or ratifying an agreement for the purchase and sale of the assets, or for the amalgamation of loan corporations;

"County."

(b) "County" shall include a city, a provisional judicial district, and any part of a county, district, or city set apart for judicial or registration purposes;

"Inspector."

(c) "Inspector" shall mean the Inspector of Registry Offices;

"Instru-
ment."

(d) "Instrument" shall include every Crown grant, and Order in Council of the Dominion and of Ontario, every deed, conveyance, mortgage, assignment of mortgage, certificate of discharge of mortgage, assurance, lease, bond, release, discharge, power of attorney, under which any such instrument is executed, every bond or agreement for the sale or purchase of land, will, probate of will, grant of administration, caution under *The Devolution of Estates Act* or renewal thereof, municipal by-law, certificate of proceedings in any court, judgment or order of foreclosure and every other certificate of judgment or order of any court affecting any interest in or title to land, and certificate of amalgamation of loan corporations, every certificate of payment of taxes, granted under the corporate seal of the county, city or town by the treasurer, every sheriff's and treasurer's deed of land sold by virtue of his office, every contract in writing, every order and proceeding in lunacy, bankruptcy and insolvency, every plan of a survey or subdivision of land, and every other instrument whereby land may be transferred, disposed of, charged, incumbered or affected in any wise, affecting land in Ontario;

Rev. Stat.
c. 148.

- (e) "Land" shall include lands, tenements, hereditaments and appurtenances and any estate or interest therein;
- (f) "Power of Attorney" shall include a revocation or alteration thereof and an appointment of a substitute thereunder; "Power of Attorney."
- (g) "Will" shall include codicil, probate of will and exemplification, and notarial or prothonotarial copy of a will, or of a probate of a will, and letters of administration with the will annexed, and a devise whereby land is disposed of or affected. "Will."
R.S.O. 1914, c. 124, s. 2.

2. Subject to the provisions of *The Land Titles Act*, after a certificate of the first registration of the owner under that Act has been registered as prescribed by that Act, this Act shall cease to apply to the land mentioned in the certificate. Application of Land Titles Act.
Rev. Stat. c. 158.
R.S.O. 1914, c. 124, s. 3.

3.—(1) No instrument affecting land in a provisional judicial district which has been granted by the Government of Ontario by Letters Patent or by Order of the Lieutenant-Governor in Council since the 31st December, 1887, other than lands mentioned in subsection 2 of section 158 of *The Land Titles Act*, or which shall hereafter be so patented or granted, shall be registered under this Act. Lands in districts patented since 31st December, 1887.
Rev. Stat. c. 158.

(2) The registration in the registry office of any such district of any lands so patented or granted before the passing of this Act is declared to be valid and effectual and instruments affecting such lands, patents for which have been already registered may continue to be registered under this Act. Saving as to lands heretofore registered.

(3) A person claiming an interest in unpatented lands in any such district may as heretofore lodge with the local master of titles a caution under section 81 of *The Land Titles Act* subject to the provisions of that section. Claim to unpatented lands.
Rev. Stat. c. 158.
R.S.O. 1914, c. 124, s. 4.

4.—(1) Subject to the provisions of this Act and except where otherwise expressly provided in any general or special Act, the registry divisions as they existed on the 14th day of April, 1925, shall be the registry divisions of the Province of Ontario for the purposes of this Act and no alterations in the boundaries of any riding, electoral district or municipality shall alter or affect the boundaries of any registry division. Change of boundaries of ridings not to affect registry divisions.
1927, c. 38, s. 2.

(2) Where a new county or district is formed the same shall constitute a registry division. New divisions.
R.S.O. 1914, c. 124, s. 5 (2).

Situation of
office.

5.—(1) Where a registry division includes the whole or part of the county or district town the registry office shall be situate therein, and in other cases shall be situate at such place as the Lieutenant-Governor in Council shall direct.

Idem.

(2) Where a registry office is, in the opinion of the Lieutenant-Governor in Council, inconveniently or unsafely situated he may direct that a new registry office be erected on a new site to be approved by him. R.S.O. 1914, c. 124, s. 5 (3, 4).

County coun-
cils to provide
fireproof
offices and
vaults.

6.—(1) For the safe-keeping and protection of all books, memorials, duplicates and other instruments of whatever description and plans belonging to the office of registrar, the council of every county where at any time there are no safe and proper fire-proof offices and vaults provided by the council, or where hereafter any registry office is established, or where under the provisions of section 5 the Lieutenant-Governor in Council has directed a change of site, shall provide, furnish, maintain and keep in good repair a safe and fire-proof registry office, fire-proof vaulted, upon a plan and on a site to be approved by the Lieutenant-Governor in Council; and the council shall keep the registry office furnished with fuel and furniture and in good repair and properly heated, lighted, cleaned and ventilated.

Expense.

(2) A town separated from a county for municipal purposes, and a city for which there is no separate registry office, shall bear such equitable proportion of the expense incurred under subsection 1 as the Inspector shall direct.

Registrar to
provide for
vaults, etc.,
when directed
by Inspector.

(3) Except where in this Act it is otherwise provided the Inspector may in writing authorize the registrar under the direction of an architect named by the Inspector to expend out of the proportion of the fees to which the county or city may then or thereafter be entitled under sections 101 and 104 in providing adequate fire-proof or metal fittings for the vault of the registry office or for the proper heating and ventilation of the vault so much as may be deemed by the Inspector to be necessary, and the amount so expended, including the architect's charge, shall be certified by the Inspector, and his certificate or a duplicate thereof shall be transmitted by the registrar to the treasurer of the county or city, and shall be a discharge to the registrar of the amount so certified, as against the proportion of the fees then payable or to become thereafter payable by him. R.S.O. 1914, c. 124, s. 8 (1-3).

Municipality
to provide
typewriting
machines.

(4) The corporation of any county or city charged with the duty of providing books for use in a registry office shall when so required by the Inspector provide typewriting machines for use in copying instruments in the registry books. R.S.O. 1914, c. 124, s. 8 (4); 1927, c. 38, s. 3.

REGISTRARS.

7. There shall be a registrar for every registry division who shall be appointed by the Lieutenant-Governor in Council and shall hold office during pleasure. R.S.O. 1914, c. 124, s. 9. Registrars, how appointed, etc.

8. Every registrar shall have a seal of office to be approved of by the Inspector. R.S.O. 1914, c. 124, s. 10. Registrar's seal.

9.—(1) The Lieutenant-Governor in Council may fix and determine the amount of the security to be furnished by each registrar. Security.

(2) The amount of such security shall, except in the case of a registrar in a provisional judicial district, be not less than \$4,000 nor more than \$10,000. Amount of.

(3) The Lieutenant-Governor in Council, upon the application of any county or city interested, or without such application, may require any registrar to furnish additional security in such form and for such an amount as the Lieutenant-Governor in Council determines to be sufficient to secure the due payment of any money payable by the registrar to the county or city. R.S.O. 1914, c. 124, s. 11. Additional security may be directed.

10. The registrar and his sureties shall be jointly and severally liable upon and to the extent of the security furnished to any aggrieved person to indemnify him against any damage or loss sustained by him, by or through the neglect or misconduct of the registrar or his deputy in the performance of the duties of his office, but this provision shall not exempt the registrar from any further responsibility to a person sustaining such damage or loss. R.S.O. 1914, c. 124, s. 12. Liability of registrars and their sureties.

11. Every registrar, before he enters upon the duties of his office, shall take and subscribe the oath, Form 1, which shall be transmitted by him to the Provincial Secretary. R.S.O. 1914, c. 124, s. 13. Registrar's oath of office.

12.—(1) The registrar may by writing under his hand and seal of office appoint a deputy or deputies who may perform all the duties required under this Act in the same manner and to the like effect as if done by the registrar. Appointment of deputies.

(2) In case of the death, resignation, removal from or forfeiture of office of the registrar, the deputy registrar, or if more than one, the senior deputy registrar, shall do and perform all and every act, matter, and thing necessary for the due execution of the office, until a new appointment of registrar is made, and if there is no deputy registrar the Crown attorney shall be the registrar *pro tempore* until another person is appointed, and the Crown attorney on becoming registrar may appoint a deputy registrar. Power of deputy in case of death or removal of registrar.

Temporary
officer to be
responsible.

(3) The registrar *pro tempore* shall be answerable for the execution of the office during such interval, and any security given by the registrar shall be and stand as security for the due and faithful performance of the duties of his office by the registrar *pro tempore*. R.S.O. 1914, c. 124, s. 14.

Deputy's oath
of office.

13. Every deputy registrar, before he enters on the duties of his office, shall take and subscribe the oath appointed to be taken by the registrar, or an oath to the like effect, which oath he shall forthwith transmit to the Provincial Secretary. R.S.O. 1914, c. 124, s. 15.

Registrars or
deputies, etc.,
not to act as
agents for
persons tak-
ing securities
on real estate,
or in selling
land, or
advise as to
titles, etc., in
their counties.

14.—(1) No registrar or deputy registrar or clerk in his office shall, directly or indirectly, act as the agent of any corporation, or person investing money and taking security on land within his county, nor advise, for fee or other reward, or otherwise, upon titles to land, or practise as a conveyancer, or act as an agent for the sale of land, within his county, nor shall he carry on or transact within the registry office any other business or occupation whatever.

Idem.

(2) No registrar, deputy registrar or clerk in a registry office shall take any proceeding under a power of sale in a mortgage or other instrument affecting land, nor shall he personally, or as a member of a firm, carry on a loaning business or be in any way connected with a firm which transacts any business with the office of the registrar.

Restriction on
practising a
profession.

(3) No registrar, deputy registrar or clerk in a registry office shall practise as a barrister, solicitor, physician or surgeon. R.S.O. 1914, c. 124, s. 16 (1-3).

DUTIES OF REGISTRARS.

Work in reg-
istry office to
be personally
supervised by
registrar.

15. The registrar shall reside within ten miles of his office, and the work of the office shall be conducted and carried on under the direction and immediate supervision of the registrar. R.S.O. 1914, c. 124, s. 17.

Hours of
attendance at
office.

16.—(1) Except as hereinafter in this section provided the registrar or his deputy shall attend at his office from the hour of ten o'clock in the forenoon until four o'clock in the afternoon, every day in the year, holidays excepted, and no instrument shall be registered on any holiday, nor shall any instrument be received for registration except within the hours above named. R.S.O. 1914, c. 124, s. 18 (1).

Of registrars
for certain
divisions.

(2) The registrars for the City of Toronto, the Registry Division of East and West York, the County of Wentworth, the County of Carleton, the City of Ottawa, the City of London, the County of Waterloo, the County of Leeds, the County of Frontenac and the City of Kingston and in the provisional

judicial districts, or their respective deputies, shall attend at their offices on Saturdays, from the hour of ten o'clock in the forenoon until one o'clock in the afternoon and no longer, and no instrument shall be received for registration on that day except within those hours. R.S.O. 1914, c. 124, s. 18 (2); 1927, c. 38, s. 4.

(3) From the 1st day of July to the 31st day of August, both days inclusive, none of the other registrars shall, after one o'clock in the afternoon on Saturdays, register any instrument, nor shall any instrument be received for registration, nor shall it be obligatory to attend at his office after that hour. R.S.O. 1914, c. 124, s. 18 (3).

Office hours
of other regis-
trars on Sat-
urday during
long vacation.

(4) The council of any county may by by-law authorize the closing on Saturday of any registry office within the county at one o'clock in the afternoon, and while such by-law is in force, no instrument shall be received on Saturday for registration in such registry office after the said hour, and the registrar shall post up a copy of the said by-law in a conspicuous place in the registry office. 1917, c. 27, s. 25.

Closing
registry
offices on
Saturday
afternoon.

17.—(1) The registrar shall, when required, and upon being tendered his proper fees, make searches and furnish abstracts of or concerning all instruments or memorials registered which mention any lot of land as described in the patent thereof from the Crown, or any lot described by number or letter on any registered plan, subsequent to the registration of the plan, or any part of a lot where the same is clearly described and can be identified in connection with the chain of title, or has been ascertained by actual survey, and of and concerning all instruments registered, as may be requested of him in writing, if a writing is demanded by him; and he shall exhibit any original registered instrument, and also the books of the office relating thereto when a personal inspection thereof is desired, and shall give extracts certified under his hand of and concerning the parties to any of such instruments, or of the witnesses to the same, or any other particulars which may be required, but no registrar shall allow any such book or instrument to be taken out of his possession or custody. R.S.O. 1914, c. 124, s. 19 (1).

Registrars to
make searches
and abstracts.

To exhibit
originals of
instruments,
etc.

To certify
extracts, etc.

(2) Every abstract furnished by a registrar shall be commenced and certified to in the words following:

Certificate of
registrar on
abstracts.

Registry Office, County of

Abstract of title

I certify that the above (*or the following*) are correct extracts from the only instruments registered in this office which mention or refer to (*describe property sufficiently for identification*). This abstract does not purport to give entries from the general register or bankruptcy books.

Dated at this day of 19 , at
the hour of

Registrar, or Deputy-Registrar. (L.S.)

R.S.O., 1914, c. 124, s. 19 (2); 1927, c. 38, s. 5.

Fees to be stated on abstract.

(3) The fees for every abstract shall be stated on the face thereof and shall show the items making up the amount of such fees.

If requested discharged mortgages and expired liens to be omitted from abstract.

(4) The registrar, when requested in writing to do so by the person requiring an abstract of title, shall omit from it mortgages and assignments thereof in respect of which instruments purporting to be discharges are entered in the abstract index and mechanics' liens, in respect of which an action has not been brought, and a certificate thereof registered as required by *The Mechanics Lien Act*, or any other class of instrument mentioned in the request, and in such case the certificate of the registrar shall be varied accordingly. R.S.O. 1914, c. 124, s. 19 (3, 4).

Persons searching not to use ink for copying.

18. A registrar shall not permit any person other than his officers or employees to use ink or other indelible fluid or substance for the purpose of making copies of or extracts from an instrument, document, book, paper or record in the registry office, or of any matter therein contained. R.S.O. 1914, c. 124, s. 20.

Non-liability for certain errors or omissions.

19. A registrar shall not be liable in respect of entries of instruments or errors or mistakes in the entries of instruments or omissions by any of his predecessors in office, nor for any defect or inaccuracy in any abstract or certificate arising from such error, mistake or omission, unless he had become aware or had knowledge of such error, mistake or omission, or unless such abstract or certificate shall be defective or inaccurate to the knowledge of the registrar or his deputy or the clerk by whom it is made or signed. R.S.O. 1914, c. 124, s. 21.

Registrar to furnish certified copies.

20.—(1) On request of any person the registrar shall furnish a certified copy, under his hand and seal of office, of any instrument or memorial deposited, registered, or filed and kept in his office.

Not bound to produce any papers, except on order of a judge.

(2) No registrar or deputy registrar shall be required to produce any instrument or document in his custody as registrar or deputy registrar, unless ordered by a judge of one of the courts of Ontario, which order shall be produced to the officer issuing the subpoena requiring such production, and shall be by him noted in the margin of the subpoena. R.S.O. 1914, c. 124, s. 22.

BOOKS OF OFFICE.

Treasurer to provide proper books.

21.—(1) The treasurer of every county and the treasurer of every city for which there is a separate registry office shall provide a fit and proper registry book for each township, city, town, or village, and for each town plot laid out by the Crown, and all index and other books required for the business of the registry office.

(2) All registry books shall be as nearly as may be of the Pattern. like size and description as those heretofore furnished, and shall continue to be of one uniform size as nearly as practicable.

(3) From the time the books are so provided and received Separate for each local municipality. at the registry office the registrar shall keep and cause to be used for that purpose a separate registry book for and of each township, city, town and village and for each town plot laid out by the Crown within his registry division. R.S.O. 1914, c. 124, s. 23 (1-3).

(4) Every registrar shall keep a general registry book General registry book. herein called the "General Register" for the whole of the registry division, which shall be used for the purposes hereinafter set forth and every registrar shall keep an alphabetical index of the names of all the parties mentioned by name in every instrument but in the case of wills, probates and letters of administration with the will annexed it shall be sufficient to enter only the name of the testator and executors. 1927, c. 38, s. 6 (1),

(5) The registrar shall also keep a by-law book in which By-law book to be kept to record money by-laws. shall be entered the registration number of every money by-law, the number of the by-law and its title, and name of the municipality, the amount of the debt, the rate of interest and the period for which the debentures are to run, and where the rates are to be levied on part only of the rateable property in the municipality, that fact shall be stated. R.S.O. 1914, c. 124, s. 23 (5); 1927, c. 38, s. 6 (2).

(6) No entry in respect of the by-law shall be made in No entry in general register necessary. the general register. R.S.O., 1914, c. 124, s. 23 (6).

(7) Where, before the 7th day of April, 1896, wills had been recorded in the separate books of a registry division but not in the general register when the same ought to have been recorded therein and in other cases where in his opinion public convenience so requires, the Inspector may, by order in writing, direct that an alphabetical index shall be prepared and kept of the names of all persons mentioned by name in such wills and designating the book or books and the pages thereof in which such wills are recorded, and the treasurer shall, for such index and the preparation thereof, pay to the registrar such sum as the Inspector may order in writing R.S.O. 1914, c. 124, s. 23 (7); 1927, c. 38, s. 6 (3).

(8) The general register shall be used for recording wills, probates, grants of administration, and powers of attorney in which there is a general devise or power affecting land without local description, and claims for lien under *The Mechanics Lien Act* against land which constitutes the line of railway or right of way of a railway company, and also certificates of amalgamation of loan corporations, and where a mortgage of railway or other lands was registered prior to General registry book, what to be used for. Rev. Stat. c. 173.

the 1st day of April, 1899, in the general register of any registry division, a discharge of such mortgage or a reconveyance of the mortgaged premises may be registered therein. R.S.O. 1914, c. 124, s. 23 (8); 1915, c. 20, s. 13; 1927, c. 38, s. 6 (4).

New books.

(9) When a registrar requires a new registry book, or any other book for the use of his office, the same shall, on his application therefor in writing, be furnished to him by the treasurer, and all books so furnished shall be paid for by the treasurer.

Property.

(10) All books so furnished, used and kept shall be the property of His Majesty.

Extra books.

(11) The Inspector, when for the despatch of business he finds it necessary, may, by order in writing, permit more than one registry book to be in use at the same time for the same municipality. R.S.O. 1914, c. 124, s. 23 (9-11).

If the treasurer neglects to provide books.

22. If the treasurer refuses or neglects to furnish any such book within thirty days after application therefor the registrar may provide the same and recover the cost thereof from the municipal corporation of the county or city in default. R.S.O. 1914, c. 124, s. 24.

Registrar to certify books.

23. The registrar shall certify, Form 2, respecting each register or other book so furnished or provided. R.S.O. 1914, c. 124, s. 25.

Provision where territory attached to or new registry division formed.

24.—(1) Where a new registry division is established consisting wholly or in part of territory which theretofore formed part of an existing registry division, the registrar of the registry division from which such territory is detached shall deliver to the registrar of the registry division of which it becomes part or in which it is comprised,—

Certain books, instruments and plans to be transferred.

(a) the registry books and all other books and indexes which have been kept according to law exclusively for such territory or any part of it;

(b) the original memorials of all instruments and documents relating exclusively to land within such territory, including deposits filed in pursuance of *The Custody of Documents Act*;

(c) all maps of municipalities within such territory deposited according to law in his office, and all registered plans relating exclusively to land within such territory;

(d) an abstract index book of all instruments relating to land within such territory registered before separate registry books were kept for each township or place;

Rev. Stat.
c 157.

(e) a proper registry book containing full and complete copies of all memorials and other registered instruments, including deposits filed in pursuance of *The Custody of Documents Act*, affecting such land which are not under the provisions of clause *b* required to be delivered, or which, though relating exclusively to land within such territory, are entered in a registry book not required to be delivered as provided by clause *a*;

Rev. Stat.
c. 157.

(f) another proper registry book containing copies of all wills and other instruments registered in a general register in which the names of any of the parties to them have been entered in the alphabetical index kept for any part of the territory;

(g) a copy of the alphabetical index attached to any such general register.

(h) copies of all plans which, though not affecting exclusively such territory, include within their boundaries any portion of it. R.S.O. 1914, c. 124, s. 26 (1); 1918, c. 27, ss. 2, 3, 4; 1925, c. 39, s. 2.

Transfer
or change in
registry
division.

(2) The copies mentioned in clause *e* of the next preceding subsection shall be entered in the registry book in the same order in which they are entered in the original registry book, and the registrar shall write on the margin of such first mentioned book opposite to the entry of each memorial or instrument the number of it and the time at which the same was registered as appears by the indorsement thereon.

Copies to be
entered ac-
cording to
original order.

(3) Each registry book to be delivered shall have or be accompanied by an alphabetical index of names.

Books to be
indexed.

(4) The registrar shall carefully compare all entries made in the registry books which he is required to deliver with the original entries in the registry books in his office, and shall write and sign a certificate that he has done so in each book before delivering it.

Comparing
and certifying
books.

(5) The registrar who receives any original memorial or instrument under the provisions of this section which is not copied in any registry book delivered to him shall cause the same to be copied in a proper registry book.

Entering in-
struments not
copied.

(6) A registrar who fails to perform the duties imposed on him by the preceding subsections of this section within six months after the territory is detached from his registry division, or within any extended period allowed by the Inspector under the provisions of subsection 7, shall incur a penalty not exceeding \$400.

Penalty for
neglect to de-
liver books,
etc.

Extension.

(7) The Inspector may extend such period of six months for a further period not exceeding six months. R.S.O. 1914, c. 124, s. 26 (2-7).

Registrar removed or resigning to deliver up books to new registrar, etc.

25. Where a registrar is removed from or resigns his office he shall forthwith deliver up all books, plans, instruments, memorials and indexes in his possession as registrar to the person who is appointed registrar in his stead, or to any other person who may be appointed in writing, by the Attorney-General of Ontario to receive the same, and if the registrar refuses to do so the Attorney-General may direct the sheriff of the county to seize and take immediate possession of the same wheresoever found, and the registrar so offending shall incur a penalty not exceeding \$2,000, and, in the discretion of the court, may also be imprisoned for any period not exceeding one year. R.S.O. 1914, c. 124, s. 27.

Penalty. in case of refusal.

When any book becomes unfit for further use copy to be made.

26.—(1) Where any book, from age or use, is becoming obliterated or unfit for future use the Inspector shall, by direction in writing under his hand, order that it be re-copied in a book of the same description as that prescribed by section 21, so far as the same can be deciphered by examination thereof and of the original instruments or memorials relating thereto.

Original to be preserved.

(2) Such book, having the order of the Inspector inserted at the beginning, and having the affidavit or declaration of the registrar or his deputy at the end, to the effect that it is a true copy of the original book, shall be accepted and received as the original, and as *prima facie* evidence that the copy is a true copy, but the original book shall nevertheless be carefully preserved.

Repair of books, maps, etc.

(3) The Inspector may order any book which is out of repair to be repaired in such manner as he thinks necessary, and may order plans and maps deposited in any registry office to be copied, mounted or bound, and to be preserved in such manner as he thinks necessary.

Inspector may order duplicate or new abstract indexes.

(4) The Inspector may order as many counterparts or copies of any abstract index book to be made as he shall deem necessary for the public convenience, and may order new abstract indexes to be made when the indexes in use have become complicated or otherwise inconvenient.

And new surveys and plans.

(5) When authorized so to do by the Lieutenant-Governor in Council the Inspector may order new surveys and plans to be made of any locality or territory in a registry division which, in his judgment, have become necessary, whether such locality or territory has or has not been subdivided according to a registered plan. R.S.O. 1914, c. 124, s. 28.

Payment for services under ss. 24 and 26.

27. Subject to the provisions of section 28 the fees and expenses for services rendered under sections 24 and 26 shall be paid by the treasurer of the county; and a town separated

from the county for municipal purposes, and a city for which there is not a separate registry office shall pay to the county such equitable proportion thereof as the Inspector shall direct. R.S.O. 1914, c. 124, s. 29.

28. The Inspector may order the expenses of new surveys and plans, and the registration thereof under the provisions of section 26, to be paid by the treasurer of any local municipality concerned, or in part by the county treasurer and in part by the treasurer of the local municipality, and the local municipality may, subject to the order of the Inspector, cause such expenses or part thereof to be levied by assessment on all rateable property comprised in the portion of the municipality affected by such plan or survey. R.S.O. 1914, c. 124, s. 30.

Fees for preparing plans, etc., for municipalities.

29.—(1) The registrar, in a book, Form 3, called the "Abstract Index," shall enter under a separate and distinct head each separate lot or part of a lot of land as originally patented by the Crown, or as defined on any registered plan of the subdivision of such land into smaller sections or lots.

Abstract index of lots.

(2) Every instrument which mentions such parcel or lot of land or other subdivision, the names of every party to such instrument and the nature of it, the registration number for each municipality in which land mentioned therein is situate, and the day, month and year of its registration, the consideration or mortgage money mentioned in it, and such a description of the land therein mentioned as will readily identify its location, shall, in addition to all entries by law required, be entered by the registrar in the abstract index in regular order under the proper heading of each separate parcel or lot of land. R.S.O. 1914, c. 124, s. 31.

Entries.

30. Every registrar shall also keep, for each township, city, town, and village, and for each town plot laid out by the Crown an alphabetical index of names, Form 4, exhibiting in columns the number of each instrument, the names of the grantors, and the names of the grantees. R.S.O. 1914, c. 124, s. 32.

Alphabetical index of names for each locality.

INSTRUMENTS THAT MAY BE REGISTERED.

31. Except as herein otherwise provided, and subject to the provisions of the next following section, all instruments mentioned in section 1 may be registered. R.S.O. 1914, c. 124, s. 33.

Instruments which may be registered.

32.—(1) Except as provided by subsection 8 of section 21 no instrument which affects land without local description shall be registered unless the instrument, when offered for registration in addition to the ordinary proofs for registra-

Instruments affecting lands without local description.

tion, has attached to it a statutory declaration by one of the parties to the instrument, or by his attorney under registered power of attorney, or by the heirs, executors or administrators of such party, to the effect that the instrument affects land within the registry division, and giving a local or general description of such land sufficient to enable the same to be traced or ascertained by a surveyor, and thereupon such instrument shall be recorded in the proper separate registry book and particulars thereof entered in the abstract index and in all other books in the same manner as if the instrument itself had contained the local description of the land.

Registration of instruments in general register and separate registry books.

(2) Where an instrument affecting land without local description is, under this section, recorded in the separate registry books it may be further recorded and entered therein so as to affect other land by local description, by the registration of a statutory declaration, Form 15, to be made by any of the persons in this section mentioned.

Registry of statutory declaration as to lands affected.

(3) Where an instrument has been or is recorded in the general register particulars thereof may be recorded in the separate registry books by the registration of a like statutory declaration.

Manner of recording.

(4) Such last-mentioned statutory declaration shall be recorded in the proper registry books, and particulars thereof entered in the abstract index and in all other books in the same manner as upon the registration of an instrument which affects land by local description.

Who may make declaration for a corporation.

(5) Any statutory declaration in this section mentioned may, where one of the parties to an instrument is a corporation, be made by an officer thereof, or where one of the parties entitled to make a declaration is absent from Ontario it may be made by his solicitor.

Meaning of "local description."

(6) In this section "local description" shall mean a local or general description of land sufficient to enable the same to be traced or ascertained by a surveyor. R.S.O. 1914, c. 124, s. 34 (1-6).

What may be registered before grant from Crown.

(7) Except mortgages, incumbrances or liens, made or given by the original nominee of the Crown, or by any person through whom a person, obtaining a grant of land from the Crown, derived title, no instrument affecting land that has not been granted by the Crown shall be registered. 1919, c. 25, s. 16.

Proof for registration.

33.—(1) An instrument other than a will, grant from the Crown, Order in Council, by-law or other instrument under the seal of any corporation, certificate of judicial proceedings or an instrument which may be registered by deposit of a certified copy shall not be registered unless accompanied by an affidavit, Form 5, of a subscribing witness, not being a party to the instrument, as to the execution of the instrument

by each party who appears to have executed the same, setting forth the name, place of residence, addition, occupation or calling of the witness, and deposing to—

- (a) the execution of the original and of the duplicate, if any, by the party to whose execution thereof he is a witness;
- (b) the place of execution by such party;
- (c) that he knows that the person who executed the instrument in his presence is the party to the instrument as to whose execution thereof he deposes;
- (d) that he is a subscribing witness to the instrument.

(2) The affidavit shall be made on or securely attached to the instrument.

(3) An instrument may be registered notwithstanding that the Christian name or names of the subscribing witness making the affidavit is or are only set forth therein by initials or abbreviation and not in full.

Name of witness need not be set forth in full in affidavit.

(4) The proof of the execution of an instrument made before the 1st day of September, 1910, which was sufficient proof for registration before that day, shall be sufficient proof for registration under the provisions of this Act. R.S.O. 1914, c. 124, s. 35.

Saving.

34. An instrument, not purporting to convey the land therein mentioned, but which in its nature is, or purports to be, given as a security for the payment of a debt or liability incurred by the person executing the same in respect of a purchase or delivery of any goods or in respect of an advance or loan of money, shall not be registered unless the affidavit of execution, Form 6, states that the instrument was read over and explained to the person executing the same, and that he appeared perfectly to understand the same, and was informed that it might be registered as an incumbrance on his land. R.S.O. 1914, c. 124, s. 36.

Affidavit of execution in case of instruments given in respect of purchase or delivery of goods.

(See section 68 as to discharge of such claims.)

35.—(1) Every affidavit made under the authority of this Act shall be made before the registrar or deputy registrar of the registry division in which the land lies, or before some person authorized by law to take affidavits in or for use in Ontario.

Before whom to be sworn in Ontario.

(2) Where an affidavit of execution is made out of Ontario before a person who has not an official seal it shall be sufficient for him so to certify. R.S.O. 1914, c. 124, s. 37.

Affirmation or declaration in certain cases.

36. The proof may be by affirmation or declaration when the person before whom the same is made certifies that, by the law of the country where the proof is made, an affirmation or declaration may be substituted for an affidavit. R.S.O. 1914, c. 124, s. 38.

Parties not to take affidavits.

37. No person authorized to take affidavits shall take an affidavit of the execution of an instrument to which he is a party; nor shall such an affidavit be taken from a witness unless the witness has subscribed his name in his own handwriting as such witness. R.S.O. 1914, c. 124, s. 39.

Witnesses to sign.

Witnesses compellable to make affidavit.

38. Every subscribing witness shall be compellable, by order of a judge of the Supreme Court or of a county or district court, to make affidavit or proof of the execution of an instrument for the purpose of registration, and to do all other acts necessary for that purpose, upon being paid or tendered his reasonable expenses therefor. R.S.O. 1914, c. 124, s. 40.

Witnesses insane, absent, etc.

39. Where the witnesses to an instrument are dead or are out of Ontario, or have become insane, idiotic, imbecile, or of unsound mind or understanding, and whether so found by inquisition or not, or where an instrument, not by law requiring an attesting or subscribing witness thereto, has been executed without an attesting or subscribing witness, or if it is proved that the place of abode or residence of such first mentioned witnesses is unknown, any person who is or claims to be interested in the registration of the instrument may make proof before any judge of any county or district court, of the execution of the instrument, and upon a certificate, Form 7, being endorsed on the instrument and signed by the judge, the registrar shall register the instrument and certificate. R.S.O. 1914, c. 124, s. 41.

Seal of court or seal of corporation with signature of officer to suffice for registration.

40. The seal of a court of record affixed to an instrument of itself, and the seal of a corporation affixed to an instrument with the signature of the secretary, manager, or attorney or presiding officer thereof, shall be sufficient evidence for the purpose of registration, of the due execution of the instrument by the judge, or the officer of the court signing the same, or by the corporation. R.S.O. 1914, c. 124, s. 42.

Judgment affecting lands may be registered.

41. Every judgment or order affecting land may be registered in the registry office of the registry division in which the land is situate on a certificate signed by the proper officer of the court setting forth the substance and effect of the judgment or order and the land affected thereby. R.S.O. 1914, c. 124, s. 43.

NOTE: *As to registration of order of Mining Court, vesting land in co-owner who has paid acreage tax, see The Mining Tax Act, Rev. Stat. c. 28, s. 19.*

42.—(1) Where an instrument is registered the registrar shall deliver a certified copy or copies thereof as may be required of him, and of all the documents connected with or relating to the same, under his signature and seal of office, and in his certificate he shall state the time, place and other particulars of registration, and that the copy which he so delivers is a true copy of the instrument, and of all the other documents connected with or relating to the same of which they respectively purport to be copies, and in the case of a will that the affidavit proving the due execution of it is deposited in his office.

Registrar to deliver certified copy of registered instruments.

(2) Every such certified copy may be registered in any other registry office, by deposit thereof, without production of the original instrument and without proof other than the production of the copy so certified.

Registration of certified copy.

(3) Where an instrument is deposited in an office of land titles, or is registered in the office of the clerk of a county or district court, a copy thereof certified by the officer in whose office it is deposited or registered may be registered in any registry office in the same manner as a copy of an instrument certified by a registrar.

Instrument in land titles or county or district court office.

(4) A power of attorney or other instrument conferring authority upon an officer or person to act for an incorporated company, executed by the company and deposited in the office of any department of the Government, may be registered by the deposit of a copy thereof certified by the proper officer of that Department and without production of the instrument or proof of the execution thereof. R.S.O. 1914, c. 124, s. 44.

Registration of powers of attorney deposited with Government department.

[As to evidence by certified copy, see *The Evidence Act*, *Rev. Stat. c. 107*, ss. 46 and 47.]

43. A notarial copy of an instrument executed in the Province of Quebec, the original of which is filed in a notarial office according to the law of Quebec, and a prothonotarial copy of an instrument executed in Quebec may be registered and shall be treated under this Act for all purposes as if it were the original instrument, and such notarial or prothonotarial copy with the seal of the notary or prothonotary attached shall be registered without any other proof of the execution of the original thereof. R.S.O. 1914, c. 124, s. 45.

Registration of notarial copies of instruments executed in Quebec.

44. Every deed or conveyance and every charge or mortgage registered under this Act, shall by endorsement thereon show the full name and place of residence, giving the street number, if any, of the grantee or mortgagee, as the case may be. 1923, c. 26, s. 2.

Deed, conveyance and mortgage to contain full name and address of grantee or mortgagee.

INSTRUMENT IN FOREIGN LANGUAGE.

Registering
instruments
in foreign
languages.

45. Where an instrument or an affidavit of execution is written wholly or in part in a language other than English there shall be produced with the instrument or the affidavit of execution a translation into English, together with an affidavit by the translator stating that he understands both languages and has carefully compared the translation with the original, and that the same is in all respects a true and correct translation, and the registrar shall not enter the instrument or affidavit in the language in which it is written but shall copy from the translation. R.S.O. 1914, c. 124, s. 46.

MANNER OF REGISTERING.

Generally.

Instruments
to be re-
gistered in
full unless
otherwise
provided.

46.—(1) Unless otherwise provided, every instrument which may be registered under this Act shall be registered upon and by delivery to and deposit with the registrar of the instrument or of a duplicate or other original part thereof with all necessary affidavits, and, unless otherwise provided, every such instrument shall be recorded at full length in the proper book, including every certificate and affidavit accompanying it, except registrar's certificates.

Fees payable
before regis-
tration.

(2) The registrar shall not be bound to receive for registration or to register an instrument unless the proper fees are first paid. R.S.O. 1914, c. 124, s. 47.

Mortgages
not registered
in full.

47.—(1) When a mortgage has endorsed upon it the words "not to be recorded in full," the mortgage shall not be copied into the registry book. R.S.O. 1914, c. 124, s. 48 (1).

Method.

(2) The mortgage shall be numbered as other instruments are required to be numbered in the registry book in its proper order, and the marginal note made as required by section 52, and the registrar shall at the time of the registration enter opposite the number in the registry book the words "Mortgage not recorded in full," and shall also give the date and names of the parties to the mortgage, the amount secured, the rate of interest, the amount and dates of payment set out in the proviso for redemption, the time for which the mortgage is to run and such a description of the land therein mentioned as will readily identify the location. R.S.O. 1914, c. 124, s. 48 (2); 1916, c. 24, s. 20.

Particulars
of mortgage
not regis-
tered in
full.

Fee on
registration.

(3) The fee payable for registration, not including more than four distinct parcels of land having a separate heading in the abstract index, shall be \$1.50, and for each additional parcel requiring entry to be made under a separate heading in the abstract index, five cents. R.S.O. 1914, c. 124, s. 48 (3); 1918, c. 27, s. 5.

(4) Where the mortgage embraces two or more parcels of land situate in different municipalities in the same registry division there shall be paid a further fee of twenty-five cents for each municipality after the first. R.S.O. 1914, c. 124, s. 48 (4). Fee on registration of mortgage not registered in full.

(5) After the registration of the mortgage the registrar, upon the application of any person claiming to be interested in the mortgaged land, and upon payment of the prescribed fees as set out in section 92, less the amount already paid for registration, shall cause such mortgage to be recorded in full in the registry book. R.S.O. 1914, c. 124, s. 48 (5); 1927, c. 38, s. 7. Subsequent registry in full.

(6) The registrar shall indicate in the abstract index, in the case of the registration of a mortgage endorsed "Not to be recorded in full," that the same has not been recorded in full, and where it has afterwards been recorded in full, under the provisions of subsection 5, the registrar shall note in the abstract index opposite the entry, "Subsequently recorded in full," giving the date of recording and the number and page of the registry book. Entry in abstract index where mortgage not registered in full.

(7) In this section the word "mortgagee" shall include the assignee of a mortgage and a person obtaining any security coming within the terms of section 34, and the word "mortgage" shall include an assignment of a mortgage and an agreement to extend the time for payment of a mortgage or any such security. R.S.O. 1914, c. 124, s. 48, (6, 7). "Mortgagee" and "mortgage."

48.—(1) No instrument purporting to be signed or executed by any person by attorney shall be registered unless, at or before the time of registration, the original power of attorney, or a copy thereof certified for registration, is registered in the same registry office, but when such power of attorney or a certified copy thereof cannot be produced proof may be made before a judge of any county or district court of the execution of the instrument, and upon a certificate, Form 7, being endorsed on the instrument and signed by the judge that he is satisfied by the proof adduced of the due execution of the instrument the registrar shall register the instrument and certificate. Registration of power of attorney when instrument executed by attorney.

(2) Where an instrument, signed or executed by any person by attorney, is registered the registrar shall enter a note of the fact of such signature or execution by attorney, giving the name of the attorney, on the abstract index and on all abstracts of title thereafter furnished by him relating to the land affected by the instrument. Special entry to be made when instrument executed by attorney.

(3) Subsection 1 shall not apply to instruments purporting to be executed by attorneys or commissioners for the Canada Company, the Trust and Loan Company of Canada, the Scottish Ontario and Manitoba Land Company, the North Exception.

British Canadian Investment Company, the North of Scotland Canadian Mortgage Company, Limited, or the Scottish American Investment Company. R.S.O. 1914, c. 124, s. 49.

Instrument in two or more parts.

49. Where an instrument in two or more original parts is registered the registrar shall endorse upon each of such parts a certificate of the registration, Form 8, and any part so certified shall be received as *prima facie* evidence of the registration of the instrument and of the due execution of the same. R.S.O. 1914, c. 124, s. 50.

Instruments relating to several lots in different localities.

50. Where an instrument includes parcels of land situate in different municipalities in the same registry division it shall only be necessary to furnish the instrument or one original part of the instrument, with an affidavit of its execution, and the instrument and affidavit shall be copied into the registry book for each municipality or place wherein any of the land therein mentioned is situate, and the registrar shall make the necessary entries and certificates. R.S.O. 1914, c. 124, s. 51.

Copying into registry book.

Filing instrument and affidavit.

Certificate and its effect.

51.—(1) When an instrument is registered the registrar shall make an entry thereof in the abstract and alphabetical index books, and record the instrument in the registry book in the order in which it is received, and file the same with the affidavit of execution and any other affidavit or certificate accompanying it, and shall endorse on every such instrument and upon every duplicate or other original part of it a certificate, Form 8, and shall therein mention the year, month, day, hour and minute in which the instrument was registered, stating in what book the same has been recorded, and the registration number, and shall sign the certificate, which shall be allowed and taken in all courts as evidence of the respective registries.

Registrar to see that all copies in registers are correct.

(2) The registrar shall see that all copies of instruments in the registry books are true copies, and he or his deputy or clerk shall certify all such copies by writing "examined and certified true copy" in the margin opposite every copy in the book, appending his initials and the date.

Statutory declaration of correctness.

(3) When a registry book is completed the registrar, his deputy or clerk, shall at the end thereof show by a statutory declaration that the copies contained in such book and certified by him are true copies of the original instruments of which they purport to be copies. R.S.O. 1914, c. 124, s. 52.

Pages and instruments to be numbered.

Minute of registration in margin.

52. Every page of the registry book and every instrument recorded therein shall be numbered and the year, month, day, hour and minute of registration shall be entered in the margin of the registry book, Form 9, and the entry shall be signed by the registrar or his deputy. R.S.O. 1914, c. 124, s. 53.

Crown Grants.

53. Grants from the Crown shall be registered by producing the grant or an exemplification thereof, with a true copy thereof with an affidavit verifying such copy, and the copy shall be deposited with the registrar, and the correctness of it shall be verified by the registrar or his deputy. R.S.O. 1914, c. 124, s. 54. Crown grants.

Orders in Council.

54. Orders in Council shall be registered by depositing a copy of the Order certified by the clerk of the council. R.S.O. 1914, c. 124, s. 55. Orders in Council.

Wills.

55.—(1) A will shall be registered,

(a) by the production of the original will and the deposit of a true copy thereof with an affidavit verifying such copy, and with an affidavit sworn to by one of the subscribing witnesses to the will proving the due execution thereof by the testator; or; Registration of wills.

(b) by the production of probate or letters of administration with the will annexed, or an exemplification or certified copy thereof, under the seal of any court in Ontario, or in Great Britain and Ireland, or in any British province, colony, or possession, or in any foreign country having jurisdiction therein, and by depositing a true copy of the probate, letters of administration, or exemplification or certified copy with an affidavit verifying such copy or by depositing the said probate, letters of administration, exemplification or certified copy. R.S.O. 1914, c. 124, s. 56 (1); 1918, c. 27, s. 5.

(2) The correctness of the sworn copy shall be verified by the registrar or his deputy. Verification.

(3) Where a will is registered by the production of the original will the affidavit of the subscribing witness or of some other person shall state that the testator is dead. R.S.O. 1914, c. 124, s. 56, (2, 3). Proof of testator's death.

(4) Unless with the consent in writing of the Treasurer of Ontario, or of some one authorized by him to consent an original will or an exemplification or certified copy of probate or letters of administration with the will annexed under the seal of any court in Great Britain and Ireland, or in any British province, colony or possession, or in any foreign Compliance with requirements of Succession Duty Act.

Rev. Stat.
c. 26.

country having jurisdiction therein, shall not be registered under this section unless accompanied by a certificate of the registrar of the surrogate court of the county in Ontario where the deceased had a fixed place of abode, or where the lands, or any of them, devolving by the will are situate, showing that a statement has been filed with him similar to that required by section 12 of *The Succession Duty Act*, and such certificate shall be deposited with the registrar. R.S.O. 1914, c. 124, s. 56 (4); 1919, c. 25, s. 17.

Recording
wills.

(5) All wills shall be recorded in the general register and properly indexed, and where a will contains a devise of or charges, or otherwise affects land described therein by a description sufficient to readily identify same, it shall also be entered in the abstract index against the lands so described. 1918, c. 27, s. 7.

Letters of Administration.

Registration
of letters of
administra-
tion.
Rev. Stat.
c. 148.

56. Letters of administration which under *The Devolution of Estates Act* affect land shall be registered in the same manner as a probate of a will. R.S.O. 1914, c. 124, s. 57.

Notice of Sale Under Mortgage.

Registration
of notice of
sale.

Rev. Stat.
c. 140.

57.—(1) A notice of sale of land under the provisions of *The Mortgages Act*, and a notice of exercising the power of sale contained in any mortgage and the affidavit or declaration of service thereof may be registered, and the same shall be registered in the same manner as an instrument affecting land, but it shall not be necessary to record the notice or the affidavit or declaration of service attached thereto in the registry book.

Proof for
registration.

(2) The affidavit or declaration shall be made by the person who served the notice, and shall prove the time, place and manner of such service, and that the copy delivered to the registrar is a true copy of the notice served.

Certified copy
to be
evidence.

(3) A copy of the registered notice and affidavit or declaration certified under the hand and seal of office of the registrar shall be *prima facie* evidence of the service of the notice as stated in the affidavit or declaration.

Proof of
notice of
sale under
mortgage.

(4) Where the person who served the notice is dead or out of Ontario, or where it is proved to the satisfaction of a judge of a county or district court that the place of abode of such person is unknown, or that he is incapable of making an affidavit or declaration of service, or where service of such notice has been or is duly admitted any person who is or who claims to be interested in the registration of the notice may make proof before the judge of the service of the notice, and upon a certificate of such judge endorsed on or attached to the notice and signed by him to the effect that from the proof

adduced by the person producing the proof, naming him, he is satisfied of the due service of the notice, the registrar shall register the notice and certificate.

(5) Where the notice cannot be produced to be registered any person who is or who claims to be interested in the registration of the notice may make proof before the judge of the service thereof and of the inability to produce the same, and upon depositing a certificate of such judge to the effect that from the proof adduced by the person producing the proof, naming him, he is satisfied of the due service of the notice upon the person served, naming him, and that the same cannot be produced the registrar shall register the certificate, and a copy of such certificate under the hand and seal of the registrar shall be *prima facie* evidence of the facts therein stated.

Where notice of sale lost and cannot be produced.

(6) Where a notice of sale or a certificate of a judge under subsections 4 or 5 has been registered, the same may be registered in any other registry office by depositing a copy thereof, certified in the manner provided by section 42. R.S.O. 1914, c. 124, s. 58.

Other registry offices.

(7) From and after the 1st day of July, 1927, no final order of foreclosure or instrument purporting to be a conveyance of land under power of sale contained in a mortgage which has been registered "not in full" shall be registered until the said mortgage and any assignment thereof has been duly copied in full in the proper registry book pursuant to subsection 5 of section 47. 1927, c. 38, s. 8.

No foreclosure or sale under power until mortgage registered.

[As to registration of orders and judgments for alimony, see *The Judicature Act*; as to registration of notice of seizure of a mortgage by sheriff, see *The Execution Act*; as to registration of mechanics liens and discharges of liens, see *The Mechanics Lien Act*, and for liens on mining claims and rights, *The Mining Act*. See also *The Northern Ontario Development Act* and *The Hospitals for the Insane Act*.]

Rev. Stat. cc. 88, 112, 173, 45, 36, 253.

Instruments Executed before the 1st January, 1866.

58. The registration of an instrument executed before the 1st day of January, 1866, may be made through a memorial or by certificate or otherwise, as provided by the law in force before that date. R.S.O. 1914, c. 124, s. 59.

Registration of instruments executed before 1st Jan., 1866, etc.

59. The proof that would before the 1st day of January, 1866, have been sufficient for the registration of an instrument executed before that date, shall be sufficient for the registration hereafter of any such instrument, but the instrument shall be recorded at full length, and the memorial and affidavit shall be deposited with the registrar in lieu of the original. R.S.O. 1914, c. 124, s. 60.

Proof of registration of instruments in full executed before 1st Jan., 1866, etc.

Registration
of instruments
in full when
memorials pre-
viously reg-
istered.

60.—(1) An instrument which has been registered by memorial, and has endorsed thereon a certificate of the registration thereof, may be re-registered in the same or any other registry division by the production of the original instrument and by the deposit of a copy with an affidavit verifying the same.

Method.

(2) The registrar shall record the instrument, the affidavit of verification and the certificate of former registration at full length, and shall write in the margin of the registry book the words "Original not deposited," and, where the former registration was made in the same office, the registrar shall write upon the entry of the memorial in the registry book a memorandum as follows: "Re-registered and recorded in full as No. ,," giving a reference to the number and registry book where the instrument is recorded in full, and he shall also note the re-registration in red ink wherever the memorial is entered in an abstract index.

Endorsement.

(3) The registrar shall also endorse upon the original instrument a certificate of the re-registration, Form 8. R.S.O. 1914, c. 124, s. 61.

Discharges of Mortgages.

Registration
of discharge
of mortgage.

61. In the case of a registered mortgage the registrar on receiving a certificate, Form 10, executed by the mortgagee, his executors, administrators or assigns, or by such other person as may be entitled by law to receive the money and to discharge the mortgage, and duly proven in the manner provided for the proof of other instruments, shall register the same, and record it and every affidavit attached to or endorsed on it, at full length in the proper order, in the registry book, and number it in like manner as other instruments are required to be registered, recorded and numbered. R.S.O. 1914, c. 124, s. 62; 1918, c. 27, s. 8.

Discharge of
mortgages
held by
amalgamated
loan corpor-
ations.

62. Where a loan corporation which has acquired the assets of another loan corporation by amalgamation of such corporation and the certificate of such amalgamation has been registered desires to discharge any of the mortgages of such corporation it shall be sufficient to set forth in the instrument to be registered the fact of the assent of the Lieutenant-Governor in Council to such amalgamation with the date of the certificate of amalgamation and its registered number in the registry division in which the land affected is situate, or mentioning the Act by which the loan corporations were amalgamated or by which the agreement was ratified, and upon registration of the discharge the registrar shall enter in the abstract index the facts mentioned in the discharge. R.S.O. 1914, c. 124, s. 63.

63.—(1) Where a mortgage has been paid off by any person advancing money by way of a new loan on mortgage on the same land and the mortgage so paid off or the discharge thereof is held by the mortgagee making the new loan, the discharge of the mortgage so paid off shall be registered within six months from the date thereof, unless the mortgagor shall, in writing, have authorized the retention of the discharge for a longer period.

Registration of discharge when mortgage paid off by subsequent mortgagee.

(2) The registration shall not affect the right, if any, of the mortgagee who may have paid off such mortgage, his assignee, or any person claiming under him, by purchase or otherwise, to be subrogated to the rights of the mortgagee whose mortgage debt has been so paid. R.S.O. 1914, c. 124, s. 64.

Rights of subsequent mortgagee.

64.—(1) Where the person entitled to receive the mortgage money and to discharge a registered mortgage is not the original mortgagee, he shall, at his own expense, cause to be registered before the registration of the certificate of discharge all the instruments or documents through which he claims interest in and title to the mortgage money, and until such instruments or documents are registered the registrar shall not register such certificate of discharge.

Registration of discharge given by person other than the mortgagee.

(2) The certificate shall mention the date and the date of registration and the registration number of each of the instruments or documents through which the person executing the certificate claims interest in and title to the mortgage money, and the names of the parties thereto.

Contents.

(3) This section shall apply to powers of attorney where the certificate of discharge or prior instrument or document is executed by attorney, provided that it shall be sufficient in the certificate of discharge to state the date of each instrument, document or power of attorney and the names of the parties thereto, and to endorse on the certificate the date of registration and registration number of each instrument, document, or power of attorney, which endorsement shall be signed by the person who signed the certificate, or his attorney or agent, and the endorsement shall be deemed to be part of the certificate.

Application of section.

(4) Where probate of will or letters of administration with the will annexed is required to be registered under this section, and the will is over seven folios in length, including the probate or letters, and does not affect land in the registry division, except in so far as the testator was the holder of a mortgage, it shall not be necessary to record the will at full length; but it shall be sufficient to deposit a copy of and record so much of the probate or letters as shows the grant of probate or letters and the appointment of executors or administrators.

Registering probate or letters of administration.

Verification.

(5) The copy shall be accompanied by an affidavit of the executors or administrators, or of one of them, or of his or their solicitor, verifying it and stating that there is nothing in the will limiting the right of the executors or administrators to receive the mortgage money and discharge the mortgage, and that the will does not affect land in the registry division in which the probate or letters is to be registered, except in so far as the testator was the holder of a mortgage comprising land in such registry division.

Application to judge for order to register instruments authorizing discharge to be given.

(6) Where the person whose duty it is to register such instruments or documents refuses or neglects to register the same within fifteen days after payment of the mortgage money to him, the person entitled to redeem the mortgage may, on giving ten days' notice in writing to the person so refusing or neglecting, apply in a summary manner to a judge of the county or district court of the county or district wherein the land or any part thereof mentioned in the mortgage is situate for an order directing that the person so refusing or neglecting shall within a time to be fixed by the judge register such instruments or documents at his own expense, and the judge, upon being satisfied by affidavit or oral evidence that the application is a proper one, may make the necessary order.

Powers of judge.

(7) On being satisfied of the due service of the notice the judge may proceed in the absence of the person so refusing or neglecting.

Form of notice

(8) The notice shall state that it is given in pursuance of this section. R.S.O. 1914, c. 124, s. 65.

Release of part only of lands mortgaged.

65.—(1) Where the holder of a mortgage desires to release or discharge part of the land comprised in it, or to release or discharge part of the money secured by the mortgage, he may do so by deed or by certificate to be made, executed, proven, and registered in the same manner and with the like effect to the land or money released or discharged as when the whole land and mortgage are released and discharged.

(2) The deed or certificate shall contain as precise a description of the land released or discharged as is required in an instrument of conveyance for registration, and also a precise statement of the particular sum so released or discharged. R.S.O. 1914, c. 124, s. 66.

Effect of registration of discharge of mortgage.

66. Every certificate of payment or discharge of a mortgage or of the conditions therein or of the lands or any part thereof, at any time given, and whether before or after the time limited by the mortgage for payment or performance, if in conformity with this Act shall, when registered, be a discharge of the mortgage or of the lands in such certificate

described, as the case may be, and shall be as valid and effectual in law as a release of the mortgage or of such lands and as a conveyance to the mortgagor, his heirs or assigns of the original estate of the mortgagor therein. R.S.O. 1914, c. 124, s. 67; 1927, c. 38, s. 9.

67.—(1) Where a sheriff, bailiff of a division court or other officer, under a writ or warrant of execution against goods, seizes a mortgage belonging to the person against whose goods the writ or warrant has issued, on or affecting land in Ontario, the payment of the mortgage money in whole or in part to the sheriff, bailiff, or other officer by the mortgagor, or any other person or any person claiming under him, shall satisfy the mortgage to the extent of such payment.

Discharge of mortgage seized under execution.

(2) After payment of the mortgage money or any part thereof, the sheriff, bailiff, or other officer shall, at the request and expense of the person requiring the same, give a certificate, Form 11, under the hand and seal of office of the sheriff or other officer, or under the hand of the bailiff and the seal of the court of which he is bailiff.

Form of certificate of discharge.

(3) Upon the written request of the bailiff the clerk of the court shall affix to the certificate the seal of the court and he shall file the request of the bailiff in his office.

Seal of division court.

(4) The execution of the certificate shall be proved in the same manner as in the case of other instruments affecting land, and the certificate shall be registered in the same manner as other certificates of discharge.

Proof of execution of certificate.

(5) The certificate when registered, if the same is of payment in full of the mortgage, shall be as valid and effectual in law as a release of the mortgage and as a conveyance to the mortgagor, his heirs, executors, administrators, or assigns, or any person lawfully claiming by, through or under him or them, of the original estate of the mortgagor as if executed by the execution debtor.

Effect of certificate.

(6) The certificate when registered, if the same is of payment of only a part of the mortgage money, shall be as valid and effectual in law as a release of the mortgage, as to such part, as if executed by the execution debtor. R.S.O. 1914, c. 124, s. 68.

Effect of certificate of part payment.

(7) Where a mortgage has been seized by a sheriff or bailiff of the division court or other officer in the manner provided by law, and such seizure has been withdrawn, vacated or for any other reason set aside, the sheriff, bailiff or such other officer under whose hand notice of seizure has issued, may give a certificate directed to the registrar in whose office the notice of seizure is registered, to the effect that such seizure has been withdrawn, vacated or set aside as the case may be, and such certificate shall be registered in the registry

Notice of seizure of mortgage.

office in the same manner and for the same fee as a discharge of mortgage. 1918, c. 27, s. 9.

Discharge of instrument given in relation to purchase of goods.

68. Instruments of the nature mentioned in section 34 may be discharged, and the land affected thereby released therefrom by depositing in the proper registry office a certificate of discharge, Form 12. R.S.O. 1914, c. 124, s. 69.

By-laws, etc.

Registration of by-laws passed since 29th March, 1873.

69.—(1) Every by-law passed since the 29th day of March, 1873, or hereafter passed by a municipal council under the authority of which any street, road or highway is closed or under the authority of which any street, road, or highway is opened upon any private property shall, before the same becomes effectual in law, be registered in the registry office of the registry division in which the land is situate; and the same shall be registered without further proof by depositing a copy certified under the hand of the clerk and the seal of the municipality. R.S.O. 1914, c. 124, s. 70 (1); 1918, c. 27, s. 10.

As to by-laws etc., relating to roads made before 29th March, 1873.

(2) Every by-law passed before the 29th day of March, 1873, and every order and resolution of the quarter or general sessions of the peace passed before that day under the authority of which any street, road, or highway, has been opened upon any private property may at the election of any person or municipality interested and at the cost and charges of such person or municipality be registered by depositing a certified copy of the by-law under the hand of the clerk and the seal of the municipality, or a certified copy of the order or resolution of the quarter or general sessions under the hand and seal of the clerk of the peace.

By-laws, etc., changes in municipal boundaries.

(3) Every by-law, proclamation, Order-in-Council, order of the Ontario Railway and Municipal Board and other instrument of a public or *quasi* public nature whereby a village, town or city becomes incorporated, or the boundaries of any municipality are enlarged, diminished or altered, shall be registered in the proper registry office by the municipality passing or procuring the same, and a copy of a by-law, certified under the seal of the corporation and by the head and the clerk of the municipality, and a copy of the proclamation, Order-in-Council, order of the Ontario Railway and Municipal Board or other instrument certified by the clerk of the Executive Council or the secretary of the Board, as the case may be, shall be sufficient proof for the purpose of registration. R.S.O. 1914, c. 124, s. 70 (2, 3).

Authentication of money by-laws.

Rev. Stat. c. 233.

(4) A money by-law of a municipal corporation shall be authenticated for registration by the production of a duplicate original or a copy of the by-law certified as required by *The Municipal Act*. R.S.O. 1914, c. 124, s. 70 (4); 1927, c. 38, s. 10.

(5) The by-law or copy so certified shall be open to public inspection and examination at all reasonable times and hours upon payment of the proper fees. R.S.O. 1914, c. 124, s. 70 (5). Inspection of.

REGISTRATION AND ITS EFFECT.

70.—(1) After the grant from the Crown of land, and letters patent issued therefor, every instrument affecting the land or any part thereof shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration without actual notice, unless such instrument is registered before the registration of the instrument under which the subsequent purchaser or mortgagee claims. Unregistered instruments after grant from the Crown to be void against subsequent registered purchaser or mortgagee.

(2) This section shall not extend to a lease for a term not exceeding seven years where the actual possession goes along with the lease, but it shall extend to every lease for a longer term than seven years. R.S.O. 1914, c. 124, s. 71. Exception as to certain leases.

71. Priority of registration shall prevail unless before the prior registration there has been actual notice of the prior instrument by the person claiming under the prior registration. R.S.O. 1914, c. 124, s. 72. Actual notice.

72. No equitable lien, charge or interest affecting land shall be valid, as against a registered instrument executed by the same person, his heirs or assigns; and tacking shall not be allowed in any case to prevail against the provisions of this Act. R.S.O. 1914, c. 124, s. 73. As to equitable liens. Tacking.

73. Every registered mortgage shall as against the mortgagor, his heirs, executors, administrators, assigns and every other person claiming by, through or under him, be a security upon the land comprised therein to the extent of the money or money's worth actually advanced or supplied under the mortgage, not exceeding the amount for which such mortgage is expressed to be a security, notwithstanding that the money or money's worth, or some part thereof, was advanced or supplied after the registration of a conveyance, mortgage or other instrument affecting the mortgaged lands, executed by the mortgagor, his heirs, executors or administrators, and registered subsequently to such first-mentioned mortgage, unless, before advancing or supplying such money or money's worth, the mortgagee in such first-mentioned mortgage had actual notice of the execution and registration of such conveyance, mortgage or other instrument; and the registration of such conveyance, mortgage or other instrument after the registration of such first-mentioned mortgage, shall not constitute such actual notice. R.S.O. 1914, c. 124, s. 74. Mortgages how affected by subsequent registered conveyances, where mortgage moneys paid subsequently.

Registry to
be notice.

74. The registration of an instrument under this or any former Act shall constitute notice of the instrument to all persons claiming any interest in the land, subsequent to such registration, notwithstanding any defect in the proof for registration, but nevertheless it shall be the duty of a registrar not to register any instrument except on such proof as is required by this Act. R.S.O. 1914, c. 124, s. 75.

Instruments
giving
authority to
sell and
naming com-
mission, not
to bind land
after one
year from
date.

75. An instrument which is or purports to be a power of attorney or authority to sell land in which the commission, payment for services, or other remuneration of the attorney or agent is made a charge on the land, shall, as against a subsequent purchaser or mortgagee for valuable consideration and as against the creditors of the person giving the power or authority, cease to charge the land with such commission, payment for services, or remuneration after the lapse of one year from the making of the instrument. R.S.O. 1914, c. 124, s. 76.

Wills to be
registered
within
twelve
months
from death
of testator.

76. A will or the probate thereof and letters of administration with the will annexed registered within twelve months next after the death of the testator shall be as valid and effectual against subsequent purchasers and mortgagees as if the same had been registered immediately after such death; and in case the devisee, or person interested in the land devised in any such will, is disabled from registering the same within such time by reason of the contesting of such will or by any other inevitable difficulty without his wilful neglect or default, then the registration of the same within twelve months next after his attainment of such will, probate or letters of administration, or the removal of such impediment, shall be a sufficient registration within the meaning of this Act. R.S.O. 1914, c. 124, s. 77.

Registry of
deeds on
sales for
taxes and
sales under
process of
court.

77. A deed of land made by a treasurer or other officer in pursuance of a sale for arrears of taxes shall be registered within eighteen months after the sale; and a deed of land sold under process issued from any court shall be registered within six months after the sale; otherwise any person claiming under any such sale shall be deemed not to have preserved his priority as against a purchaser or mortgagee for valuable consideration without actual notice who has registered his conveyance before the registration of such deed. R.S.O. 1914, c. 124, s. 78.

Corrections.

78.—(1) Except in the manner hereinafter provided after an instrument has been entered in the abstract and alphabetical indexes, and has been recorded in the proper registry book, no entry shall be made in the abstract index or in the alphabetical index respecting such instrument; nor shall any alteration or correction be made in any entry previously made respecting any instrument, or in any copy of any instrument in any registry book.

(2) The registrar shall immediately, after becoming aware of any omission or error in recording, cause to be made in red ink such entries, alterations or corrections as are requisite; and a memorandum stating the date of every such entry, alteration or correction shall be made in red ink in the margin of the index or registry book opposite or near thereto, and such memorandum shall be signed by the registrar or his deputy. R.S.O. 1914, c. 124, s. 79. Method.

79. An instrument capable of and properly proved for registration shall be deemed to be registered when and so soon as the same is delivered either personally or by post to and received at his office during office hours by the registrar, or some officer or clerk in his office on his behalf, and thereafter no alteration shall be made by any person in such instrument. R.S.O. 1914, c. 124, s. 80. When instruments to be deemed registered.

MISCELLANEOUS PROVISIONS.

Plans.

80.—(1) Where land is surveyed and subdivided for the purpose of being sold or conveyed in lots by reference to a plan which has not been already registered the person making the survey and subdivision shall within three months thereafter register a plan of the land on a scale not less than one inch to every four chains. Registration of plans when land subdivided.

(2) The plan shall show the number of the township, city, town or village lots and range or concession as originally laid out, and all the boundary lines thereof, within the limits of the land being subdivided except where such plan is a subdivision of a lot or lots on a former plan, in which case it shall show the numbers or other distinguishing marks of the lot or lots subdivided and the boundary lines thereof. Contents of plan.

(3) The number or other distinguishing mark and the width both front and rear shall be marked on each lot of the subdivision, the scale shall also be marked on the plan, and such information as will show the depth of the lots and the courses of all the boundaries of, or the division lines between, the same and the governing line or lines to which such courses are referred shall also be indicated. Scale and particulars.

(4) The position of all the posts or monuments, if any, planted by the surveyor, or of other objects marking the boundaries of any of the lots or the corners thereof shall also be shown. Idem.

(5) The plan shall also show all roads, streets, railway land, rivers, canals, streams, lakes, millponds, marshes or other marked topographical features within the limits of the land so subdivided, together with such other information as is required to show distinctly the position of the land. R.S.O. 1914, c. 124, s. 81 (1-5). Highways and topographical features.

Designation
of lots.

(6) On every such plan the lots shall be so described and designated by numbers, letters or words that there shall not be more than one lot on such plan described and designated by the same number, letter or word, notwithstanding that the lots are on different sides of the same street or on different streets or in different blocks, and where the designation is by number the lots shall be numbered consecutively. The provisions of this section shall not apply to plans of burial plots in cemeteries. R.S.O. 1914, c. 124, s. 81 (6); 1914, c. 23, s. 2.

Plans to be
mounted.

(7) The plan shall be drawn upon linen and shall be mounted on stiff pasteboard of good quality, and when it exceeds thirty inches in length by twenty-four inches in width shall be folded so as not to exceed that size. R.S.O. 1914, c. 124, s. 81 (7); 1918, c. 27, s. 11.

Duty of reg-
istrars
thereafter.

(8) The plan, before being registered, shall be signed by the person or the chief officer of the corporation by whom or on whose behalf the same is deposited, and shall also be certified by an Ontario land surveyor, Form 13.

Registration
of field notes
and plans.

(9) In the case of a survey hereafter made the plan shall be accompanied by a copy certified by the surveyor by whom the survey was made to be a true copy of the field notes, if any, of the survey.

Index.

(10) After the registration of the plan the registrar shall keep an index of the land described and designated by any number or letter on the plan by the name by which it is so designated. R.S.O. 1914, c. 124, s. 81 (8-10).

Instruments
must con-
form to such
plan.

(11) Every instrument affecting the land or any part thereof, executed after the plan is registered, shall conform and refer thereto, otherwise it shall not be registered, except in cases provided for by section 84. R.S.O. 1914, c. 124, s. 81 (11); 1918, c. 27, s. 12.

Penalty for
refusing to
register
plan.

(12) In the case of refusal or neglect by the person making the subdivision, for two months after demand in writing for that purpose, to register the plan, in accordance with the provisions of this Act, when required by any person interested therein or by the Inspector so to do he shall incur a penalty of \$20 for every calendar month which thereafter elapses without the plan being registered, recoverable under *The Summary Convictions Act*.

Rev. Stat.
c. 121.

Verification
of signature
to plans.

(13) The signature on a plan shall be witnessed and verified as in the case of an instrument. R.S.O. 1914, c. 124, s. 81 (12, 13).

Plans show-
ing high-
ways—
approval
required
before
registra-
tion.

(14) No plan upon which any street, road or highway is laid out shall be registered unless it has been approved by the proper municipal council or councils, or by the Ontario Railway and Municipal Board, and no plan of land abutting upon a highway of a less width than sixty-six feet, or upon which there is laid out a highway of a less width than sixty-

six feet shall be registered unless it has been approved by the proper municipal council or councils, and by the Ontario Railway and Municipal Board. 1917, c. 30, s. 1, *part*; 1927, c. 38, s. 11.

(15) The registrar shall not register a plan of a subdivision of land for which the Crown patent has not issued unless the assent of the Minister of Lands and Forests to such registration is endorsed on the plan. R.S.O. 1914, c. 124, s. 81 (15). Plans of unpatented lands.

(16) The registrar shall not register a plan of a subdivision of land unless the person by whom or on whose behalf the same is tendered for registration appears on the registry books to be the owner of the land, nor unless the consent in writing of all persons who appear by the registry books to be mortgagees of the land is endorsed on the plan and signed by such person, or in the case of a corporation, by its chief officer, and such signatures are duly verified by affidavit. Provided however that nothing in this section shall be deemed to require the consent to any such plan of the owner of any easement or right in the nature of an easement in respect to the land. R.S.O. 1914, c. 124, s. 81 (16); 1924, c. 38, s. 2. Registrar not to file plans for any one but owner nor without consent of mortgagees. Proviso.

(17) When any such plan has been so registered the registrar shall make a record of it and enter on it the day and year on which the same is registered. R.S.O. 1914, c. 124, s. 81 (17). Duty of the registrar on receiving plan.

(18) No plan of survey and subdivision to which the provisions of *The Planning and Development Act* apply shall be registered unless approved as required by that Act. 1917, c. 30, s. 1, *part*. Where Rev. Stat. c. 236 applies.

(19) Subject to the provisions of section 85 this section shall apply as well to land already surveyed and subdivided as to that which may hereafter be surveyed and subdivided. R.S.O. 1914, c. 124, s. 81 (19). Application of this section.

81. The Inspector may direct that a plan index book, in the form prescribed by him, shall be kept by the registrar, and the municipal treasurer shall pay to the registrar on the order of the Inspector such sum as he may direct for the preparation in the first instance of such book and the work incidental thereto. R.S.O. 1914, c. 124, s. 82. Plan index book.

82.—(1) Whenever the Inspector deems that the public convenience so requires he may direct the registrar to subdivide any township, park or other lots in a city, town or village into such blocks for abstract purposes, as, having regard to conveyances registered upon such lots and otherwise, he considers most convenient; and in such case an abstract index shall be prepared by the registrar for each of such blocks as if the same had been originally a separate lot, Abstract index to subdivisions of township or park lots in urban municipality.

and the same shall extend from the Crown patent onwards or from or to such other date as the Inspector may direct, and shall contain those registrations only which affect the subdivision to which the index relates.

Idem.

(2) Where the original lines of the lots do not form the boundaries of such blocks, public streets or such other limits as the Inspector directs shall be taken as the boundaries thereof.

Abstract index to original lots.

(3) Where a plan of a subdivision of a lot or part of a lot has been or is hereafter registered the registrar, when directed so to do by the Inspector, shall prepare an abstract of all instruments affecting the part subdivided, and enter the same in the page or pages of the abstract index book immediately preceding the abstract as to the first lot on such plan.

Idem.

(4) Whenever and as often as a further subdivision of any of the lots on a plan is made the registrar, when directed so to do by the Inspector, shall prepare and enter in like manner an abstract of all instruments affecting the part so subdivided from the registration of the previous plan.

Remuneration of registrar.

(5) The registrar shall be allowed for preparing such abstracts, so far as the same relate to instruments registered prior to the Inspector's directing the subdivision, such amount as the Inspector may determine to be reasonable for the services, and the same shall be paid by the owner who registers the plan, or by the county or city, as the Inspector may direct.

Idem.

(6) For abstracts prepared for the purposes of plans hereafter registered the registrar shall be entitled to receive from the persons registering such plans the prescribed fees for preparing an abstract in addition to the fees to be paid for registering such plans. R.S.O. 1914, c. 124, s. 83.

Registration of instrument referring to an unregistered plan.

83. No instrument referring to an unregistered plan shall be registered unless an instrument referring to such plan has been already registered in respect of the same land; and if the registrar objects to register an instrument on the ground that it refers to an unregistered plan he may refuse to register such instrument unless the person desiring its registration refers the registrar to the number of an instrument previously registered in respect of the same land referring to the unregistered plan. R.S.O. 1914, c. 124, s. 84.

When instruments not conforming to proper plan may be registered.

84.—(1) Where an instrument which does not conform and refer to the proper plan has been duly executed and any party thereto has died, or where it would, in the opinion of the registrar, be impossible or inconvenient to obtain a new instrument containing the proper description, such instrument may be registered if accompanied by an affidavit, Form 14, annexed thereto or endorsed thereon.

(2) The registrar shall thereupon enter such instrument in the abstract index in which the subdivision is entered under the lots designated in the affidavit, and no entry shall be made in the abstract index of the land before its subdivision. R.S.O. 1914, c. 124, s. 85.

85.—(1) A plan, although registered, shall not be binding on the person registering the same, or upon any other persons unless a sale has been made according to such plan, and in all cases amendments or alterations thereof may be authorized or ordered to be made by a judge of the Supreme Court or by a judge of the county or district court of the county or district in which the land lies, on application for the purpose and upon hearing all persons concerned, upon such terms and conditions as to costs and otherwise as may be deemed just.

(2) Any such application may be made either by the person filing the plan or by the owner for the time being of any of the land covered thereby.

(3) An appeal shall lie from any such order to a divisional court.

(4) No part of a road, street, lane, or alley upon which any lot of land sold abuts, or which connects any such lot with or affords access therefrom to the nearest public highway, shall be altered or closed up without the consent of the owner of such lot; but nothing herein shall interfere with the powers of municipal corporations with reference to highways. R.S.O. 1914, c. 124, s. 86.

86. The council of any municipality may apply to a judge of the county or district court of the county or district in which are situate the whole, or any part not being less than one-half, of the lands included in any plan, and such judge shall have power to make orders or directions for the following purposes,—

- (a) for the hearing of the application upon such notice as the judge shall direct;
- (b) to cancel or suspend in whole or in part any registered plan;
- (c) to close, divert or alter any or all highways, roads, streets or lanes shown on any such plan, either temporarily or permanently, or pending the suspension of the plan;
- (d) to provide that the lands or any part or parts thereof shown on any such plan shall thereafter, or pending such suspension or until further order of such judge, be known and described by the original township or other registration numbers or designations used prior to the registration of any such plan, or such other numbers or descriptions as to such judge may seem convenient;

Duty of registrar.

Plan not binding until some sale is made under it; alterations in plan.

Application for filing plan may be made by owner for the time being.

Appeal.

Consent of owner to alteration or closing of road.

Powers of municipal corporation not to be interfered with.

Powers of county or district judge to make order.

- (e) to impose such terms and conditions as to the judge may seem proper;
- (f) to fix and determine the fees and charges to be imposed and collected by registrars for all and any services under this section, and by whom the same shall be payable;
- (g) to reinstate in whole or in part any plan suspended as aforesaid;
- (h) to make any such further or other order, direction or disposition as such judge may, in his discretion, deem proper. 1924, c. 38, s. 4.

When plan must be registered in case of lands subdivided before 4th March, 1868.

87. In sales of land under surveys or subdivisions made before the 4th day of March, 1868, where such surveys or subdivisions so differ from the manner in which such land was surveyed or granted by the Crown that the parcel so sold cannot be easily identified unless the plan is registered, the plan shall be registered if still in existence and procurable for registration, and if it is not a new plan shall be made by and at the joint expense of the persons who have made such surveys or subdivisions, and of all others interested therein, by an Ontario land Surveyor or as nearly as may be according to the proper original survey or subdivision, and the same, when so made, shall be registered as if under section 80. R.S.O. 1914, c. 124, s. 87.

Registration of plans of cities, towns, etc..

88.—(1) Where a city, town, village or territory forming part of a township comprises different parcels of land and the same were not jointly surveyed and one entire plan of such survey made and registered, the municipal council of such city, town, village, or township, upon the written request of the Inspector, shall immediately cause a plan of such city, town, village or part of a township to be made in accordance with this Act and to be registered in the registry office of the registry division within which the municipality lies. 1927, c. 38, s. 12.

Authentication of plan.

(2) The plan shall have endorsed thereon the certificates of the clerk and head of the municipality and the surveyor that the same is prepared according to the directions of the municipality and in accordance with this Act, and the corporate seal of the municipality shall be attached to the plan.

Registration of plan of territory situate in more than one township.

(3) Where such territory is situate in two or more townships the Inspector may, by a written order, cause the plan to be made and registered, and where the territory is situate in two or more registry divisions a duplicate of such plan shall be registered in each of such registry divisions.

Certificate of surveyor to be endorsed on plan.

(4) The plan shall have endorsed thereon the certificate of the surveyor that the same has been prepared according to the order of the Inspector, and such order or a copy thereof

shall be attached to or endorsed on such plan; and any plan of territory situate in two or more townships heretofore prepared upon the request of the Inspector may, in like manner, be registered, and shall when so registered be as valid as if the same had been prepared upon the order of the Inspector.

(5) The expense of the preparation and registration of a plan of territory, the inhabitants of which are not incorporated, situate wholly within one township may be paid wholly or in part by the municipality out of its general funds, or the same may wholly or in part, at the option of the municipality, be paid by a special rate to be levied by assessment on all rateable property comprised in such territory described by metes and bounds in a by-law to be passed for the purpose of levying such rate. Expense.

(6) The expense of the preparation and registration of a plan of territory, the inhabitants of which are not incorporated, situate in two or more townships shall be paid out of the general funds of the municipalities in which the territory is situate, in such proportions as the Inspector may order, and any municipality may levy its proportion of such expense, or so much thereof as the council sees fit, by assessment on all rateable property comprised in the part of the territory situate in such municipality as described by metes and bounds in a by-law to be passed for the purpose of levying such rate. Expenses of registering plan of such territory, how apportioned.

(7) Upon the production to the registrar of a certificate signed by the head of the municipal council concerned certifying that a surveyor has been employed by the council to prepare a plan for registration under this section, the surveyor named in such certificate shall be entitled, within six months from the date thereof, to make personal searches of the books, plans and instruments in the registry office for the purpose of enabling him to prepare such plan on payment of the ordinary fees payable for searches and productions up to an aggregate amount not exceeding \$25, and for all further searches and productions in excess of \$25 on payment of one-half of the ordinary fees. Rights of surveyor.

(8) Except as in this section is otherwise provided the expense of the preparation and registration of the plan shall be paid out of the general funds of the municipality. Payment of expenses.

(9) In case of the neglect or refusal of a municipality to comply with all the requirements of this section within six months next after being required so to do the municipality shall incur a like penalty to that provided by subsection 12 of section 80, recoverable under *The Summary Convictions Act*. Penalty on municipality defaulting.
Rev. Stat. c. 121.

(10) Where land in a township has been or shall hereafter be sold under surveys or subdivisions made in a manner which so differs from that in which such land was surveyed or granted by the Crown that the parcel sold cannot be easily Registration of plans of township sub-divisions in certain cases.

identified, and the plan has not been registered under this or any other Act, the council of the township may, upon the written request of the Inspector or of any person interested, cause a plan of such land to be made and registered in the same manner and with the same effect as in the case of territory inhabitants of which are not incorporated; and the expenses of the preparation and registration of the plan shall be paid by a special rate to be levied by assessment on the land comprised in such plan as described in a by-law to be passed for the purpose of levying such rate. R.S.O. 1914, c. 124, s. 88 (2-10).

Plans of
municipalities
—what to be
shown on.

(11) A plan prepared under the provisions of subsections 1 and 10 shall show such subdivisions of original lots as are shown by the registered plans, and such as are not so shown but appear from the instruments relating to such land, with each of the lots as shown on such new plan numbered or lettered in such a manner that the same may be readily identified, and the plan shall be prepared without adding to the costs thereof the expense of any actual survey on the ground except such as may be necessary to connect the subdivisions or parcels of land and to show any natural or artificial boundaries of the same which cannot be shown on the new plan from the information contained in the registered plans and instruments. R.S.O. 1914, c. 124, s. 88 (11); 1919, c. 25, s. 18.

Obligations
not impaired.

(12) Nothing in this section shall relieve any person from any liability, duty, obligation or penalty provided or imposed by or under any of the provisions of this Act.

Power of
county judge
to order new
plans to be
filed.

(13) Where any land has been sold or conveyed in lots or parcels by metes and bounds, or in any other manner without a plan having been registered under this or any other Act showing such subdivisions, or where parts of lots shown by a registered plan have been sold or conveyed, and the lots or parcels so sold or conveyed are not distinguished by numbers or letters, a judge of the county or district court of the county or district in which the land is situate, on the application of the Inspector, after such notice as the judge may deem reasonable, may make an order directing the registrar to have the same, or any part thereof, laid out into lots or parcels in such manner and numbered as the judge shall think fit, and a plan or plans thereof to be made in accordance with the records in the registry office, or from actual survey, as may be found necessary, and registered in accordance with the provisions of this Act, and the order of the judge shall be endorsed on or attached to the plan and signed by him. R.S.O. 1914, c. 124, s. 88 (12, 13).

Costs.

(14) The costs and expenses of and incidental to the application and the plan and the registration thereof shall be borne by the person or municipality to be named by the judge in the order and where the costs and expenses are directed to be borne by the municipality, the judge may by his order direct

repayment of the same to the municipality by the levy of a special rate by assessment on all the lots included in the plan. R.S.O. 1914, c. 124, s. 88 (14) ; 1919, c. 25, s. 19.

(15) On filing the order with the clerk the same may be enforced as if it were a judgment of the court.

(16) The registration of the plan shall be binding on all persons subsequently dealing with the land or any part thereof included in the plan or any interest in or concerning the same, but shall not affect the rights or interests of any owner or other person entitled at or before the date of registration.

Effect of
registration.

(17) Where the land proposed to be subdivided by plan under subsection 13 comprises 5,000 acres or upwards, which was granted by the Crown without being subdivided into lots, the Inspector may cause the Attorney-General to be notified of the application, and the Attorney-General, on behalf of the Crown, may either submit that the Crown shall pay or contribute such part of the costs and expenses, mentioned in subsection 14, as the judge may determine to be reasonable, or the Attorney-General may consent, on behalf of the Crown, that the Crown shall pay and contribute a definite part of such costs and expenses, and in either of such cases the judge may direct by what person or municipality the remainder of such costs and expenses shall be borne, and any such order may be entered and filed and may be enforced as against such person or municipality in the same manner as the order provided for in subsection 14. R.S.O. 1914, c. 124, s. 88 (15-17).

Contribution
by Crown to
sub-dividing
and surveying
blocks.

89.—(1) Every person who is required to register a plan shall, with the plan, deposit with the registrar a duplicate thereof, and a copy of the surveyor's field notes, if any, certified to be such by the surveyor who prepared the plan, and the registrar shall endorse on the duplicate a certificate showing the number of such plan and the date when the plan was registered, and the duplicate shall, without fee, be delivered by the registrar to the clerk, treasurer or assessment commissioner of the local municipality in which the land is situate.

Deposit of
duplicate plan
and field
notes.

Delivery of
duplicate to
municipality.

(2) The registrar shall not register any such plan unless a duplicate thereof and a certified copy of the surveyor's field notes, if any, are deposited in accordance with the provisions of this section. R.S.O. 1914, c. 124, s. 89.

Duty of
registrar.

Re-registration Where Registry Books Lost, etc.

90. Where the registry books and papers were, before the 4th day of March, 1868, lost or destroyed, and a memorial cannot be produced, upon proof being made to that effect before a judge of any court of record to his satisfaction as evidenced by a certificate under his hand, the registrar may re-register an instrument upon production thereof, and no

Re-registra-
tion in case
registry
books or
papers are
lost or
destroyed.

further proof shall be required than the original certificate of registration endorsed on such instrument and the instrument shall have priority according to the date of the original certificate and shall be preserved by the registrar with the records of his office. R.S.O. 1914, c. 124, s. 90.

Inspector may
order copying
of memorials.

91. Where memorials have not been copied into the registry books in their proper order the Inspector may cause the same to be entered in proper books to be procured for the purpose, in the manner provided by section 21, and the registrar shall be paid therefor in the same manner as under clause *l* of section 92. R.S.O. 1914, c. 124, s. 91.

[As to list of Crown grants being furnished to registrar, see The Public Lands Act, Rev. Stat. c. 35, s. 26, and as to proceedings where land patented is in territory under The Land Titles Act, see that Act, Rev. Stat. c. 158, s. 158.]

Fees of Registrars.

Fees.

92. A registrar shall be entitled to the following fees, except where otherwise provided:

For registra-
tions general.

(a) For the necessary entries and certificates in registering every instrument, other than those herein-after specially provided for, including among such certificates the certificate on the duplicate, if any, 40 cents; R.S.O. 1914, c. 124, s. 92, cl. (a).

(b) For registering every such instrument, \$1.60;

If the instrument exceeds 700 words, at the rate of 15 cents for each additional 100 words or fractional part thereof up to 1,400 words, and at the rate of 10 cents for each additional 100 words or fractional part thereof over 1,400 words;

If the instru-
ment includes
different lots
in different
localities.

If the instrument embraces lots or parcels of land, situate in different municipalities in the same registry division, the registration and copying of such instrument, together with all necessary entries and certificates in connection therewith, shall be considered separate and distinct registrations for each municipality in which the land is situate, and shall be paid for as follows:

Where the aggregate copying does not exceed 700 words, \$2; where it exceeds 700 words, 15 cents for every 100 words or fractional part thereof up to 1,400 words, in addition to the sum of \$2;

Where it exceeds 1,400 words, the sum of 10 cents for every 100 words or fractional part thereof in addition to the above charges; the fees shall include all certificates and necessary entries, but if the

instrument embraces more than 4 different lots or parcels of land in the same municipality, the registrar shall be allowed a fee of 5 cents for entering each lot or parcel in excess of 4, but not to exceed \$5 for such entries up to 100 entries, and where the instrument embraces more than 100 lots or parcels in the same municipality the registrar shall be allowed an additional fee of 2 cents for entering each lot or parcel in excess of 100; R.S.O. 1914, c. 124, s. 92, cl. (b); 1918, c. 27, s. 13.

- (c) For searching the registry books and indexes relating to the title of any lot or part of a lot as originally surveyed or patented by the Crown, or as afterwards subdivided into smaller lots, shown by any registered plan thereof, when not exceeding 4 references, 25 cents and 5 cents for every additional reference up to 50 references and 5 cents for every additional 2 references over 50; For searches as to title.

In no case shall a general search into the title to any particular lot, piece or parcel of land exceed the sum of \$3;

In this clause "reference" shall mean a search of a copy of an instrument in the register, and if the abstract indexes only are examined, the total fee for searching any such lot or part of a lot, including 4 references, shall be 25 cents;

"Lot" shall mean one parcel of land as originally patented by the Crown and where such parcel has been subdivided shall include any one of the lots in any such subdivision or re-subdivision, a plan of which has been registered;

No person shall make copies of or extracts from any instrument, document, book, paper or record in the registry office, or of any matter contained therein, to an extent in the aggregate exceeding 300 words for any one lot or part of a lot, except on payment, in addition to the fees for search, of 5 cents for each 100 words or fraction thereof in excess of 300 words;

Where subsequent to the registration of a mortgage the land in such mortgage has been subdivided by plan and searches are made for the purpose of ascertaining subsequent grantees or incumbrances in sale, foreclosure or other proceedings under such mortgage, the person searching, on producing a statutory declaration that the searches are being made for that purpose, shall be entitled to make such searches on all the lots in the subdivision on pay- Search to ascertain persons interested in lands divided subsequently to registration of mortgage.

ment of a fee of 10 cents for each lot, but so that the whole fee for searches shall not exceed \$2.

Searching
alphabetical
index.

General
search.

(d) For searching, if specially required, the alphabetical index of names referred to in section 30 as to each name in the books of any one township, or other municipality in the registry division, 25 cents; but if a general search as to any such name is made throughout the registry division, the aggregate of fees for such search shall not exceed \$1;

(e) For searching, if specially required, the general registry book for the whole registry division, referred to in section 21, as to each name, the sum of 25 cents;

Abstract
titles.

(f) For an abstract of title to any specific parcel certified by the registrar containing such particulars as to any number of the registered instruments affecting such parcel as the applicant may require, 25 cents;

When such abstract exceeds 100 words, 15 cents for every additional 100 words;

For copies of instruments when required, 10 cents for each 100 words;

Where there are two or more lots for which abstracts are required and the entries on such lots are identical the registrar shall not be entitled to make an abstract for each lot separately, but the abstracts of title of such lots shall be included in one abstract, and the fees therefor shall be the same as if the abstract applied to one lot only, except that the registrar shall be entitled in addition thereto to a fee of 25 cents for a search on each lot after the first lot, and for the first lot he shall be entitled to the same fees as are payable in respect of one lot;

Where there are two or more lots for which abstracts are required and the entries on such lots are partly identical, the registrar shall make a full abstract for one of the lots and enter in the same all the lots to which each instrument refers, and in the abstract of the other lots he shall only include entries affecting those lots separately; R.S.O. 1914, c. 124, s. 92, cls. (c-f).

Certificates.

(g) For each certificate furnished by the registrar, except a certificate under clauses *a* or *b*, 50 cents; R.S.O. 1914, c. 124, s. 92, cl. (g); 1918, c. 27, s. 14.

- (*h*) For registration of any plan of city, town or village lots, including all necessary entries connected therewith, \$5; but if the plan embraces more than 20 lots, the registrar shall be allowed a fee of 5 cents for each lot in excess of 20 up to 100 lots, and a fee of two cents for each lot in excess of 100; R.S.O. 1914, c. 124, s. 92, cl. (*h*); 1918, c. 27, s. 15. Fees for registering plan.
- (*i*) For registering each duplicate original certified copy of a money by-law, \$2; Fees for registering money by-law.
- (*j*) For making search for the same or inspection and examination of entries connected therewith, 50 cents; R.S.O. 1914, c. 124, s. 92, cls. (*i, j*). Fees for searches, etc.
- (*k*) For searches as to the names of registered owners and as to the mortgagees under subsection 16 of section 80, in connection with the registration of a plan, the sum of \$1, but if the search embraces more than 20 lots a fee of 5 cents for each lot in excess of 20 up to 100 lots, and a fee of 2 cents for each lot in excess of 100; 1927, c. 38, s. 13 (1). Fees for searches in connection with registering a plan.
- (*l*) For furnishing the copies required under sections 24 and 26, 10 cents for each 100 words or fraction thereof; Statement under sections 24 and 26.
- (*m*) For repairing any book, or copying, mounting, or binding plans, or for new plans and surveys, or for new abstract indexes, such sums as the Inspector may order in writing, specifying the nature of the service; Repairing books, etc.
- (*n*) For drawing each affidavit and swearing the deponent thereto, 25 cents, and the same fee for administering the oath when that only is required; Affidavits.
- (*o*) For exhibiting in the office each original registered instrument, including search for the same, 10 cents; and for producing each original registered instrument, including search for the same, in pursuance of a judge's order or subpoena, the sum of 10 cents in addition to the registrar's ordinary witness fees; R.S.O. 1914, c. 124, s. 92, cls. (*l-o*). Showing originals.
- (*p*) For registering a certificate of discharge of mortgage, including a certificate under section 68, and every other certificate excepting certificates provided for in paragraph *q*, including all entries and certificates thereof, \$1; if the certificate affects more than 4 lots or parcels, a fee of 5 cents for each lot or parcel in excess of 4; if the certificate affects 2 or more lots or parcels in the same registry division, or if the certificate or aggregate copying thereof exceeds 300 words, 10 cents for each addi- Certificates of discharge of mortgage.

tional 100 words or fractional part thereof, not to exceed \$5 in the whole in any case for the registration of the certificate; R.S.O. 1914, c. 124, s. 92, cl. (p); 1918, c. 27, s. 16.

On payment of taxes.	(q) For registering certificate of payment of taxes, 25 cents;
Amalgamation of loan companies.	(r) For registering certificate of amalgamation of loan corporations, together with a certified copy of any document mentioned in the certificate, \$4; R.S.O. 1914, c. 124, s. 92, cls. (q, r).
Administration.	(s) For registering letters of administration, \$1.50; R.S.O. 1914, c. 124, s. 92, cl. (s); 1918, c. 27, s. 17.
Notices of sale	(t) For registering notice of sale of land under power in mortgage, 50 cents; R.S.O. 1914, c. 124, s. 92, cl. (t).
Affidavit for general register.	(u) For registering a declaration for registering instrument entered in general register, 50 cents. R.S.O. 1914, c. 124, s. 92, cl. (u); 1927, c. 38, s. 13 (2).

Fees in cases not provided for.

93. Where an Act of Ontario or of the Dominion of Canada requires or permits an instrument, document or plan to be deposited, filed or registered in a registry office or requires a registrar to perform any other duty, but omits to provide fees to the registrar for his services in connection therewith, and no fees therefor are provided by this or any other Act, the registrar, in the absence of any express provision requiring him to perform such services gratuitously, shall be entitled to such reasonable fees therefor as the Inspector shall fix to be paid by the person requiring the service to be performed. R.S.O. 1914, c. 124, s. 93.

Figures.

94. In abstracts and certificates where figures are used instead of words to denote dates, numbers and quantities the same shall be charged for as if each number, though composed of several figures, were but one word. R.S.O. 1914, c. 124, s. 94.

Inspection of books in registry offices by master or local master of titles. Rev. Stat. c. 158.

95. Subject to any general rules made under the authority of *The Land Titles Act*, a master or local master of titles may, by himself or by his clerks, without payment of fees, inspect all books and papers in a registry office for his own information as such master, but this provision shall not apply to an application in which an abstract of title obtained for the purpose of such application has not been filed. R.S.O. 1914, c. 124, s. 95.

Disputes as to fees.

96.—(1) Where a dispute arises in regard to any question of fees under this Act the registrar shall forthwith submit the same to the Inspector, and shall thereupon notify the

person interested or his agent of such submission, and the decision of the Inspector upon the question submitted shall be final, unless appealed from and varied upon appeal as hereinafter mentioned.

(2) All decisions given by the Inspector shall be in writing, and the appeal therefrom shall be in like manner, and subject to the same rules of practice as nearly as may be as an appeal from a local master. R.S.O. 1914, c. 124, s. 96.

Inspector's
decisions.

Appeals.

□:

97.—(1) Every registrar shall keep posted up in some conspicuous place in his office a printed schedule of the fees and charges authorized under this Act.

Table of fees
to be posted
in registrar's
office.

(2) Every registrar shall, upon request of the person for whom the service is performed, furnish a statement in detail of the fees charged by him in respect of any matter for which fees are payable under the provisions of this Act. R.S.O. 1914, c. 124, s. 97.

Registrar to
give statement
of fees pay-
able in any
matter.

98. If the treasurer of a county or of a city in which a separate registry office is established, on the request of the registrar refuses or neglects to pay the fees and allowances for any services required by this Act, and performed by him which such treasurer ought to pay, the registrar may sue for and recover the same from the corporation of the county or city in any court of competent jurisdiction; and the Inspector's certificate of the amount and of the services rendered shall be *prima facie* evidence of the right to recover. R.S.O. 1914, c. 124, s. 98.

Recovery of
fees from
municipal
corporations.

Evidence.

99.—(1) Every registrar shall keep a separate book in which he shall enter from day to day all fees and emoluments received by him, showing separately the sums received for registering each instrument, and for searches and for extracts or copies. R.S.O. 1914, c. 124, s. 99 (1).

Registrars to
keep accounts
of fees.

(2) Every registrar shall annually, on or before the 15th day of January, make to the Lieutenant-Governor a return up to and including the 31st day of December of the next preceding year which shall show:

Registrar's
annual
returns.

- (a) the number of instruments registered and the fees therefor;
- (b) the number uncopied and uncomparied;
- (c) the number of patents registered and fees therefor;
- (d) the number of deeds registered and fees therefor;
- (e) the number of mortgages registered and fees therefor;
- (f) the number of discharges of mortgages registered and fees therefor;

- (g) the number of wills registered and fees therefor;
- (h) the number of leases registered and fees therefor;
- (i) the number of abstracts and fees therefor;
- (j) the number of searches and fees therefor;
- (k) the number of mechanics' liens and fees therefor;
- (l) the number of all other instruments registered or deposited and fees therefor;
- (m) the amount received for work done for which the county, city, or other municipality is liable;
- (n) the amount received for other services not enumerated above;
- (o) the gross amount of fees earned for the year;
- (p) the gross amount earned for the previous year;
- (q) the amount paid to the deputy registrar for services and the amount of other charges in connection with the office paid by the registrar;
- (r) the amount of surplus paid to the county or city for the year and when paid;
- (s) the amount of such surplus for the previous year;
- (t) the net amount received by registrar. R.S.O. 1914, c. 124, s. 99 (2); 1927, c. 38, s. 16.

(3) The return shall also contain such other information as may be prescribed by the Lieutenant-Governor in Council. R.S.O. 1914, c. 124, s. 99 (4).

(4) The return shall be transmitted to the Inspector. R.S.O. 1914, c. 124, s. 99 (5); 1917, c. 27, s. 26.

Registrar to furnish clerk or assessment commissioner with list of conveyances upon request.

100. The registrar shall, upon request of the council of a municipality, furnish to the clerk, or to the assessment commissioner, or assessor of the municipality, a list of all conveyances whereby land has been transferred, which have been registered in his office during the next preceding year or any part thereof, and in such list shall include the names of the grantor, the grantee or mortgagee, and place of residence of each, the consideration shown in each instrument and a short but definite description of the land conveyed or mortgaged, but shall not include leases for less than twenty-one years; and the registrar shall be entitled therefor to a fee of 5 cents for every instrument included in the list. 1923, c. 26, s. 3.

Registrar's emoluments.

101.—(1) Every registrar shall be entitled to retain to his own use in each year his net income up to \$1,500;

(2) Subject to the provisions of section 104 of this Act and of section 150 of *The Land Titles Act*, every registrar shall, of the net income of each year over \$1,500, pay to the treasurer of the county or city for which, or for part of which he is registrar, the following percentages:

Percentage payable on net income.
Rev. Stat. c. 158.

- (a) On the excess over \$1,500 up to \$2,000, ten per centum;
- (b) On the excess over \$2,000 up to \$2,500, twenty per centum;
- (c) On the excess over \$2,500 up to \$3,000, thirty per centum;
- (d) On the excess over \$3,000 up to \$6,000, fifty per centum;
- (e) On the excess over \$6,000, ninety per centum.

1918, c. 27, s. 18, *part*.

102. For the purposes of this Act "net income" shall mean the excess of all fees and emoluments earned during the calendar year after deducting the disbursements incident to the business of the office. 1918, c. 27, s. 18, *part*.

"Net income," meaning of.

103. The deduction from the gross income for the expenses connected with the work of, or in conducting the business of the offices of the registrars shall not be increased beyond the amount paid therefor in the year 1917, without the consent in writing of the Inspector. 1918, c. 27, s. 18, *part*.

Deduction for expenses not to be increased without consent of inspector.

104.—(1) On the 15th day of January in each year every registrar shall transmit to the treasurer of the county or city for which, or for part of which, he is registrar a duplicate of the return required by section 99, and shall also pay to such treasurer for the use of the municipality the percentages required by this Act to be paid by him.

Payment of surplus fees.

(2) Where a registry division includes a county or part of a county and a city or town separated from the county for municipal purposes, the percentages shall be paid to the treasurer of the county and to the treasurer of the city or town for the use of the municipality in the proportions in which the gross fees and emoluments are derived from extracts, searches, registrations, and other charges in respect of land situate in the county, and in the city or town respectively. R.S.O. 1914, c. 124, s. 104.

How computed in certain cases.

105. Every registrar shall, on or before the 7th day of January in each year, transmit to the head of any municipality to which he has made payments in accordance with the provisions of this Act during the next preceding year a statement signed by him showing the amounts so paid and the

Registrars to send statement of amounts paid to head of municipality.

dates of payment, and the head of the municipality receiving such statement shall cause it to be laid before the auditors when auditing the accounts of that year, and shall also read it at the first meeting of the council held after its receipt. R.S.O. 1914, c. 124, s. 105.

Return as to fees where registrar dies or vacates office.

106.—(1) In the case of the death, resignation or removal from office of a registrar, a like return as that mentioned in section 99 shall be made by such registrar or his legal representative, for the portion of the year during which he held office, and in all cases where, during the year the office has been in charge of more than one person, a like return shall be made by each such person for the portion of the year he had charge of the office.

Allowances and percentages, how computed.

(2) The allowances and percentages in section 101 are upon a yearly basis and shall be made and computed upon the net income of the office for the whole of the calendar year, and this whether or not the office was held by one person or more than one person, during the said year.

When office held by more than one person during year.

(3) Where more than one person has held the office in any calendar year, each of such persons shall pay an aliquot part of the percentage payable for the year, based upon the portion of the year during which he was in office, and the amount of fees earned during such period.

Application of s. 104, subs. 2.

(4) Subsection 2 of section 104 shall apply to the proportion of fees in this section mentioned. 1918, c. 27, s. 19.

Certain fees not to be included in payments to municipalities.

107. In ascertaining the percentages payable under this Act there shall not be included in the fees and emoluments any sum receivable from a municipality for the preparation of abstract indexes, or for work done under sections 24 or 26, or subsection 5 of section 82, or section 100, nor shall anything in this Act apply to the fees or emoluments received on account of services as returning officer under *The Election Act* or *The Dominion Elections Act*. R.S.O. 1914, c. 124, s. 107.

Rev. Stat. c. 8.

R. S. C. c. 6.

Inspection of registry books by municipal officers.

108. The council of every county, city or separated town may by by-law authorize the warden, mayor or treasurer to inspect the books of office kept in any registry division in the county or city, for the purpose of testing the accuracy of the returns or computations of fees received by the registrar to a share or percentage of which the county, city or town is or may become entitled, and the registrar shall at all convenient times allow such books to be inspected for that purpose free of charge. R.S.O. 1914, c. 124, s. 108.

Percentages in districts to be payable to province.

109.—(1) Section 101 of this Act shall apply to the registrars in the provisional judicial districts, but the percentages therein provided for shall, in their case, be payable to

the Treasurer of Ontario, and when such registrar is also local master of titles, the income upon which the percentages are to be computed shall be that received from the combined offices;

(2) Subsection 1 of this section shall not apply to any registrar who is paid by salary. 1918, c. 27, s. 20.

Not to
apply to
salaried
registrars.

110. The amount to be allowed for the disbursements of a registrar shall be subject to the revision and determination of the Inspector. R.S.O. 1914, c. 124, s. 110.

Disbursements
subject to
revision of
Inspector.

111.—(1) The Lieutenant-Governor in Council may make rules for the management of registry offices, and may, by such rules, confer on the Inspector such powers as may be deemed necessary for carrying out the provisions of this Act, and all other Acts relating to the duties of registrars.

Lieutenant-
Governor
may make
rules.

(2) Every such rule shall be laid before the Assembly within ten days from the making thereof if the Legislature is then in session, and if not in session, then within the first ten days of the session next after the making thereof. R.S.O. 1914, c. 124, s. 111.

To be laid
before
Assembly.

INSPECTOR OF REGISTRY OFFICES.

112. There shall be an Inspector of registry offices, who shall be appointed by the Lieutenant-Governor in Council, and who, in addition to any other duties imposed by this Act, shall,

Appointment
of Inspector,
and his duties.

- (a) make as often as practicable a personal inspection of the building in which each registry office is kept, and of the books, deeds, memorials and other instruments in each office;
- (b) see that the proper books are provided, that they are in good order and condition, that the proper entries and registrations are made therein in a proper manner and in a due and proper form and order, that the indexes are properly kept, and that all the memorials and other instruments are duly endorsed, certified and preserved;
- (c) ascertain that the office is kept open at and for the proper times, and that it is at all times duly attended by the registrar or his deputy;
- (d) settle on some uniform device for the official seals, and see that the registrars supply themselves therewith;
- (e) inspect all new abstract and alphabetical indexes, and settle and certify the sums, if any, chargeable therefor;

Inspection of
building.

Books, etc.

Office hours.

Seals of
officials.

New indexes.

- Plans. (f) ascertain whether the proper plans required by this Act have been registered, and, where necessary, enforce the provisions of this Act as to the preparation and registration thereof, and instruct the Crown attorney to take proceedings for that purpose;
- Reporting vacancies. (g) report upon any vacancies by death or otherwise in the office of registrar or deputy registrar;
- Instruction of registrar and his duties. (h) inform the registrar how and in what manner he shall do any particular act or amend or correct whatever the Inspector may find amiss; and if he finds the work improperly performed, order a new book or books to be prepared and completed by the registrar at his own expense;
- Sufficiency or insufficiency of sureties. (i) ascertain the sufficiency of the security furnished by the registrar;
- Reporting to Lieutenant-Governor. (j) report upon all such matters to the Lieutenant-Governor for his information and decision; and
- (k) perform such other duties as the Lieutenant-Governor in Council may prescribe. R.S.O. 1914, c. 124, s. 112.

113. Where the Inspector in the performance of his duties under this Act has occasion to make an enquiry or to determine any matter he may require any person to give evidence on oath, and for that purpose may summon such person to attend as a witness, may enforce his attendance, may compel him to produce books, documents and things, and to give evidence in like manner as the Supreme Court may in civil cases. R.S.O. 1914, c. 124, s. 113.

114. Every registrar shall transmit to the Inspector such particulars with reference to the business of his office as the Inspector may require. R.S.O. 1914, c. 124, s. 114.

115. Where it appears to the Inspector that the work of a registry office is unduly in arrear he may employ such assistance as he deems necessary to perform the work in arrear, and the cost thereof shall be payable by the registrar to the persons entitled, on the certificate of the Inspector. R.S.O. 1914, c. 124, s. 115.

PENALTY FOR ALTERING BOOKS OR DOCUMENTS.

116. Any person, except the registrar or other officer when entitled by law so to do, who alters any book, record, plan or registered instrument in any registry office, or makes any memorandum, word or figure in writing thereon, whether in pencil or in ink, or by any other means, or in any way

adds to or takes from the contents of such book, record, plan or registered instrument, and any person who removes or attempts to remove any instrument registered or deposited in a registry office from such office without lawful authority, shall incur a penalty of not less than \$5 and not more than \$100, recoverable under *The Summary Convictions Act*. Rev. Stat. c. 121.
R.S.O. 1914, c. 124, s. 116; 1927, c. 38, s. 15.

SPECIAL PROVISION RELATING TO TORONTO.

117. The corporation of the City of Toronto shall provide such accommodation as may be required in accordance with the provisions of this Act or any regulations made thereunder, for the registry office of the Registry Division of Toronto. City to provide accommodation, etc.
1923, c. 27, s. 5.

118. The registrar, deputy registrars, clerks, officers and employees employed in the registry office for the Registry Division of Toronto shall be paid out of the receipts of the office, such salaries as may be approved by the Lieutenant-Governor in Council, and subject to the regulations the fees prescribed by this Act shall be collected and accounted for by such persons and in such manner as the Inspector of Registry Offices may direct. Salaries.
1923, c. 27, s. 6.

119.—(1) Any registrar, deputy registrar or other officer or employee who is retired as a result of the establishment of the Registry Division of Toronto may be paid a retiring allowance to be fixed by the Lieutenant-Governor in Council not exceeding a sum equal to three-fifths of his average annual net income from his office for the five years next preceding his retirement, and any such retiring allowance shall be a charge upon and shall be payable out of the fees received from the said office in monthly payments during the lifetime of the person so retiring as part of the expenses of the registry office. Superannuation.

(2) A retiring allowance payable under subsection 1 shall be exempt from provincial and municipal taxes and shall not be subject to garnishment, attachment or seizure or any legal process and shall not be assignable. Allowance not liable to taxation.
1923, c. 27, s. 7.

120. The Lieutenant-Governor in Council may make regulations,— Regulations.

- (a) respecting the registers, plans, instruments and other books, documents and records to be kept in the registry office for the Registry Division of Toronto;
- (b) prescribing the furnishing, equipment and accommodation to be provided in the said registry office;

- (c) for the organization of the office and the appointment of deputies, officers, clerks and employees and prescribing their respective duties;
- (d) prescribing the method in which fees and other receipts of the office shall be collected, kept and accounted for;
- (e) generally for the better carrying out of the provisions of this Act. 1923, c. 27, s. 9, *part*.

FORM 1.

REGISTRAR'S OATH OF OFFICE.

County (or District) of } I (*name and describe the deponent*), having been
To Wit: } appointed to the office of Registrar, in and for the
(*name of Registry Division, etc.*), do swear that I
will well, truly and faithfully perform and execute
all the duties required of me, under the laws of Ontario, pertaining to the said office, so long as I continue therein, and that I have not given directly or indirectly, nor authorized any person to give, any money gratuity or reward whatsoever for procuring the said office for me.

Sworn before me, etc.

A Commissioner, etc.

A. B.

R.S.O. 1914, c. 124, Form 1.

FORM 2.

CERTIFICATE RESPECTING REGISTRY BOOKS.

This register contains _____ pages, exclusive of index, and is to be used for the City (*or Town, Village or Township*) of _____, in the County (*or District*) of _____ for the recording of deeds, duplicates, and other instruments under the provisions of *The Registry Act*, and is provided in pursuance of the said Act.

Dated this _____ day of _____, 19 _____.

R.S.O. 1914, c. 124, Form 2.

FORM 3.

ABSTRACT INDEX.

Township of _____, Lot No. _____ in the _____ Concession.

1	2	3	4	5	6	7	8	9
No. of In- stru- ment.	In- stru- ment.	Its Date.	Date of Regis- try.	Grantor.	Grantee.	Quan- tity of Land.	Consid- eration in con- veyance or amount of mort- gage money.	Re- marks.

NOTE.—The names of all the grantors and grantees should appear in the abstract index.

R.S.O. 1914, c. 124, Form 3.

FORM 4.

ALPHABETICAL INDEX.

No. of Instru- ment.	GRANTOR.	GRANTEE.	No. of Instru- ment.	GRANTEE.	GRANTOR.

R.S.O. 1914, c. 124, Form 4.

FORM 5.

AFFIDAVIT OF EXECUTION.

County (or District) of } I, (name, residence and occupation),
To Wit: } make oath and say:

1. That I was personally present and did see the annexed (or within) instrument (and a duplicate, *if any, according to the fact*) duly signed, sealed and executed by part thereto.

2. That the said instrument (and duplicate, *if any, according to the fact*) was (or were) executed by the said part at the of

3. That I know the said part

4. That I am a subscribing witness to the said instrument (and duplicate, *if any, according to the fact.*)

Sworn, etc,

R.S.O. 1914, c. 124, Form 5.

FORM 6.

AFFIDAVIT OF EXECUTION WHERE THE INSTRUMENT IS A SECURITY UNDER SECTION 34.

County (or District) of } I, (name, residence and occupation),
To Wit: } make oath and say:

1. That I was personally present and did see the annexed (or within) instrument (and a duplicate, *if any according to the fact*), duly signed, sealed and executed by part thereto.

2. That the said instrument was read over in my presence and explained to the said , and that he appeared perfectly to understand the same, and was informed that it might be registered as an incumbrance on his land.

3. That the said instrument (and duplicate, *if any, according to the fact*), was (or were) executed by the said part at the of

4. That I know the said part

5. That I am a subscribing witness to the said instrument (and duplicate, *if any, according to the fact.*)

Sworn, etc.

A. B.

R.S.O. 1914, c. 124, Form 6.

FORM 7.

CERTIFICATE OF THE JUDGE OF THE COUNTY OR DISTRICT COURT IN LIEU OF AFFIDAVIT OF EXECUTION.

County (or District) of
To Wit:

I,
Judge of the County (or District) Court
of the County (or District) of
certify that, from the proof adduced by
(name of the person producing the
proof), I am satisfied of the due execution of the within instrument
(or of the instrument whereof the within is a copy, memorial or
duplicate, as the case may be).

As witness my hand at
day of
19 .

the
A. B.,
Judge.

R.S.O. 1914, c. 124, Form 7.

FORM 8.

CERTIFICATE OF REGISTRATION.

I certify that the within instrument is duly
entered and registered in the Registry Office for the Registry Divi-
sion of in Book for the of
at o'clock of the day of
19 .
Number
Registrar,
or Deputy Registrar.

R.S.O. 1914, c. 124, Form 8.

FORM 9.

MINUTE OF REGISTRATION.

Entered and registered this day of
19 at o'clock m.
Registrar (or Deputy Registrar).

R.S.O. 1914, c. 124, Form 9.

FORM 10.

DISCHARGE OF MORTGAGE.

To the Registrar of the Registry Division of
 I, _____, of _____, do certify that _____ has satisfied all
 money due on, or to grow due on (or has satisfied the sum of \$
 mentioned in), a certain mortgage made by _____ of _____ to
 which mortgage bears date the _____ day of _____ 19____, and
 was registered in the Registry Office for the Registry Division of
 on the _____ day of _____ 19____, at _____ minutes past
 o'clock, _____ noon, in Book _____ for _____ as No. _____. (*here mention
 the date and the date of registration of each assignment thereof,
 and the names of the parties, or mention that such mortgage has
 not been assigned, according to the fact*), and that I am the per-
 son entitled by law to receive the money, and that such mortgage
 (or such sum of money as aforesaid, or such part of the land as
 is herein particularly described, that is to say: _____) is therefore
 discharged.

Witness my hand this _____ day of _____ 19____.
 A. B.

Witness }

R.S.O. 1914, c. 124, Form 10.

FORM 11.

CERTIFICATE OF DISCHARGE OF MORTGAGE BY SHERIFF, ETC.

To the Registrar of the Registry Division of

I, A. B., of _____ Sheriff of the County (or District) of
 [or Bailiff of the (number) Division Court of _____]
 the County (or District) of _____ do certify that by virtue of an execution wherein C. D. is plaintiff
 and E. F. defendant, issued out of the Supreme Court (or as the
 case may be) and to me directed, I seized a certain mortgage
 made by one J. H. of (as described in the mortgage) bearing date
 the _____ day of _____, 19____, and registered at
 _____ of the clock in the _____ noon, of the _____ day of
 in Book _____ for _____ as No. _____ to E. F.,
 of _____ (as described in the mortgage), the defendant in the said
 execution named, and such mortgage has not been assigned (or has
 been assigned to the defendant: *here set out date and date of regis-
 tration of assignment*) and I do further certify that I have received
 from the said mortgagor (or from the executors, administrators, or
 assigns of the said mortgagor, as the case may be), the full amount
 of said mortgage (or \$ _____ part of the mortgage money), and
 that such mortgage is therefore discharged (or that such mortgage
 is as to \$ _____ part of the money thereby payable, discharged).

As witness my hand and seal of office (or the seal of the said
 Court) this _____ day of _____ 19____.

A. B.

Witness }
 C. D. }

R.S.O. 1914, c. 124, Form 11.

FORM 12.

CERTIFICATE OF DISCHARGE OF INSTRUMENT CREATING A CHARGE.

To the Registrar of the Registry Division of
 County (or District) of } I, (name, residence and occupation),
 To Wit: } do hereby certify that of the
 of , in the County (or District) of
 (occupation) , has satisfied all money due or
 to grow due on (or has satisfied the sum of \$ mentioned in)
 a certain instrument made by of to ,
 which instrument bears date the day of 19 and
 was registered in the Registry Office for the Registry Division of
 on the day of 19 , at
 minutes past o'clock noon, in
 Book for , as No. (here mention the
*date and the date of registration of each assignment thereof, and the
 names of the parties, or mention that such instrument has not been
 assigned, according to the fact*), and that I am the person entitled
 by law to receive the money, and that such instrument (or such
 sum of money as aforesaid, or such part of the land as is herein
 particularly described, that is to say:)
 is therefore discharged.

Witness my hand this day of 19 .

A. B.

Witness }
 C. D. }

R.S.O. 1914, c. 124, Form 12.

FORM 13.

SURVEYOR'S CERTIFICATE OF PLAN.

I hereby certify that this plan accurately shows the manner in
 which the land included therein has been surveyed and subdivided
 by me; and that the said plan is prepared in accordance with the
 provisions of *The Registry Act*.

Dated 19 .

A.B.

Ontario Land Surveyor.

R.S.O. 1914, c. 124, Form 13.

FORM 14.

AFFIDAVIT WHERE INSTRUMENT DOES NOT CONFORM TO PLAN.

County (or District) of } I, (name, residence and occupation),
 To Wit: } make oath and say:

1. To the best of my knowledge and belief, the land described in the within (or annexed) instrument is designated on Registered Plan No. as lots (*describe same so as to conform to plan*).

2. That a party to said instrument died on or about the day of 19 , (or as the case may be).

(or 2. That it is impossible (or inconvenient) to obtain a new instrument or a re-execution of the said instrument containing a description conforming to the said plan for the following reasons (*here set out the facts*).

3. That I have a personal knowledge of the matters herein deposed to.

Sworn, etc.

R.S.O. 1914, c. 124, Form 14.

FORM 15.

DECLARATION UNDER SECTION 32 (2).

County (or District) of } I, (name, residence and occupation),
 To Wit: } do solemnly declare that

1. I am a party (*or as the case may be*) to an instrument affecting land without local description, registered in the Registry Division of on the day of 19 , at minutes past o'clock noon, in Book , as number .

2. The said instrument affects the land within the said Registry Division hereinafter described, that is to say (*here give a local description of the lands sufficient for the purposes of registering an instrument in the separate Registry Books under the Act*).

And I make this solemn declaration, etc.

Declared, etc.

A.B.

R.S.O. 1914, c. 124, Form 15.

CHAPTER 156.

The Mortgage Tax Act.

1.—(1) The council of any municipality, having a population of 200,000 or more, may by by-law provide that a tax not exceeding one-tenth of one per centum upon the sum of money secured by each instrument by way of mortgage or charge, registered in a registry or land titles office upon lands within the municipality shall be paid by the party registering the same and any such by-law may be repealed, altered, or amended from time to time.

Taxation of mortgages by municipality having population of 200,000 or more.

(2) Upon the passing of any by-law under subsection 1 by the council of a municipality, a copy thereof, certified by the clerk of the municipality under the seal of the corporation, shall be deposited with each registrar and master whose registry or land titles division covers land in such municipality, and from and after the deposit of the by-law as aforesaid, such tax as is provided shall be collected by the registrar or master as the case may be, before he registers the mortgage. 1918, c. 20, s. 70 (1, 2).

By-law to be deposited.

Tax collected by registrar.

2.—(1) Any registrar or master, not paid by salary, shall be entitled to retain to his own use two and one-half per centum of the monies collected by him.

Registrar entitled to percentage.

(2) The registrar and master shall, within the first week of each month, furnish the Inspector of Legal Offices with a statement of the amount collected during the previous month in respect of said tax, and shall pay over the amount thereof, less the percentage provided for in subsection 1 to the said Inspector, who shall deposit the same in a special account in some incorporated bank in which public money of the Province is being deposited.

Amount collected to be paid to inspector.

(3) The money so received by the said Inspector shall be applied as follows and in the order given:

Application of money collected.

1. In payment of any of the expenses of the land titles office, payable by the municipality, as provided by section 150 of *The Land Titles Act*.

Rev. Stat. c. 158.

2. The balance to be paid to the municipality for the purpose of defraying the expenses and charges in connection with the registry or land titles office buildings within such municipality. 1918, c. 20, s. 70 (3-5).

Registrar may require affidavit as to amount of mortgage to be filed.

3. Where the amount to be secured by any mortgage is not clearly stated therein, or where the registrar or master has any doubt as to the amount intended to be secured, he shall require the full and true amount of the monies intended to be secured by such mortgage to be proved by affidavit to be filed with him. 1918, c. 20, s. 70 (6).

Tax to be payable once only.

4.—(1) Notwithstanding anything contained in this Act or in any by-law heretofore or hereafter passed under subsection 1 of section 1, and notwithstanding that the same instrument may be registered or entered more than once, or that more than one instrument may be registered or entered for securing the same sum of money, or that any such instrument or instruments may be registered or entered in more than one registry office or land titles office, or in a registry office and land titles office, the tax imposed by any such by-law shall be payable once only in respect of any one transaction for securing money by way of mortgage or charge, or by mortgage and charge, and shall be payable upon delivering to the registrar, or lodging in the land titles office the first instrument registered or lodged in such transaction.

Tax not to be collected when receipt for payment on prior registration produced.

Rev. Stat. cc. 158, 155.

(2) Where lands upon which a sum of money is secured are registered under *The Land Titles Act*, and other lands upon which the same sum of money is secured are subject to *The Registry Act*, and the instruments are registered or lodged and appear to be executed as part of the same transaction for securing such sum of money, and it appears by the production of the receipt of the master or registrar that the tax has been paid upon the registering or lodging of one of such instruments, the master or registrar shall not require any further payment of the tax before registering or entering the instrument delivered to him.

Division of tax where lands in different registry divisions.

Rev. Stat. cc. 158, 155.

(3) Where the lands upon which any sum of money is charged are partly in one registry division and partly in another, or parts of the lands are registered under *The Land Titles Act*, and parts are subject to *The Registry Act*, the registrar or master receiving the tax shall retain the percentage mentioned in subsection 1 of section 2, and shall pay over to the registrar or master in whose office any mortgage or charge is subsequently registered or entered for securing the same sum of money, such proportion of the percentage as may be agreed upon between them, and in case of disagreement, the amount to be paid shall be determined by the Inspector of Legal Offices. 1919, c. 25, s. 37, *part*.

No tax on collateral instrument.

5. Where an instrument purports to be executed concurrently with or as collateral security to a mortgage or charge already registered, the registrar or master shall register or enter such concurrent or collateral instrument without requiring the payment of the tax. 1919, c. 25, s. 37, *part*.

6. Where any sum of money is charged upon freehold lands and leasehold lands, and a mortgage or assignment of the lease is registered or lodged as security in addition to and separately from the mortgage or charge upon the freehold lands, and the person delivering the mortgage or charge to the registrar or master produces a receipt for payment of the tax upon the registration of any other mortgage or charge or assignment, given as security for the same sum, the registrar or master shall receive and register or enter the mortgage, charge or assignment without requiring the payment of the tax. 1919, c. 25, s. 37, *part*.

Tax not to be collected on assignment of lease as collateral security.

7. Where a mortgage or charge recites that it is given as a renewal of a mortgage or charge already registered, no tax shall be payable upon the registration of such renewal mortgage or charge, except to the extent by which the amount secured by such renewal, mortgage or charge exceeds the amount secured by the original mortgage or charge, but the registrar or master, before registering or entering such renewal, mortgage or charge, may require such further proof of the facts as he may deem necessary. 1919, c. 25, s. 37, *part*.

Tax not to be collected on renewal except as to additional amount.

8. Where a mortgage or charge recites that it is given to secure moneys, a portion of which moneys is required to pay off a prior mortgage or charge already registered, no tax shall be payable upon the registration of such mortgage or charge except to the extent by which the amount secured by such mortgage or charge exceeds the amount required to pay off the prior mortgage or charge, but the registrar or master, before registering or entering such new mortgage or charge, may require such further proof of the facts as he may deem necessary. 1919, c. 25, s. 37, *part*.

Tax not to be collected on amount required to pay off prior mortgage.

9. Where the right of the registrar or master to require the payment of the tax under this section or any portion thereof, is disputed, by the person registering or lodging a mortgage or charge, the tax may be paid under protest, and the registrar or master shall give a receipt in writing signed by him, for the amount paid, and shall state that the same has been received subject to protest, and shall thereupon refer the matter to the decision of the Inspector of Legal Offices, who may order the refund of the tax or any portion thereof to the person paying the same. 1919, c. 25, s. 37, *part*.

Proceedings where tax disputed.

CHAPTER 157.

The Custody of Documents Act.

Interpretation
"Document."

Rev. Stat.
c. 155.

1. In this Act "document" shall include whatever is included in the word "instrument," as defined by *The Registry Act*, and also any certificate, affidavit, statutory declaration, or other proof as to the birth, baptism, marriage, divorce, death, burial, descendants, or pedigree of any person, or as to the existence or non-existence, happening or non-happening of any fact, event or occurrence upon which the title to land may depend, and notices of sale, or other notices necessary to the exercise of any power of sale or appointment or other power relating to land. R.S.O. 1914, c. 125, s. 2.

Person having
custody of
deeds, etc.,
may deposit
them in reg-
istry office.

2. Any person having any document, forming or being a title-deed or evidence or muniment of title to land in Ontario, may deposit the same for safe custody in the office of the registrar of any registry division in which the document or a duplicate or copy or memorial or certificate thereof has been registered; or, where it does not appear by any endorsement thereon that the same or a duplicate or copy or memorial or certificate thereof has been registered, the document may be so deposited in the office of the registrar of any registry division in which any land to which the same relates is situate. R.S.O. 1914, c. 125, s. 3.

Requisition
to be filed
and receipt
given.

3. Upon every such deposit the person depositing shall deliver to the registrar a requisition in duplicate, Form 1, which may include any number of documents; and the registrar shall sign a receipt upon one of the duplicates for the documents therein mentioned, and shall deliver the receipt to the person by whom the deposit is made. R.S.O. 1914, c. 125, s. 4.

Each docu-
ment to be
numbered
and entered
in deposit
index and
filed.

4.—(1) Upon receiving the requisition and the documents therein mentioned the registrar shall enter every document in consecutive order in a book, Form 2, to be called the "Deposit Index," and shall therein number such documents consecutively, and shall endorse on each document the word "deposited," with the date of deposit and the number of the entry thereof in the deposit index; and shall file the same in consecutive order according to its number; and shall also endorse on the requisition the numbers so placed on the documents therein mentioned; and shall file all the requisitions in consecutive order according to such numbers.

(2) The registrar shall also enter in an alphabetical index, to be called the "Alphabetical Deposit Index," the number of the document in the deposit index, and the name of every party to the document, or to the action, suit or proceeding to which the document relates, or if the same is a certificate or an affidavit, or a statutory declaration or other proof as to the birth, baptism, marriage, divorce, death or burial of any person, the name of such person.

Names to be entered in alphabetical index.

(3) Where it appears by any certificate of registration endorsed on the document that the same or a duplicate or a copy or memorial or certificate thereof is registered in his registry office, the registrar shall also enter in the margin of every registry book wherein the same is registered opposite the entry thereof the words, "See deposit index No. , 19 ,," referring to the number of the document in the deposit index and the date of the deposit. R.S.O. 1914, c. 125, s. 5.

Entry opposite registered instruments.

(4) When any deposit refers to a lot or parcel of land the registrar shall also enter on the abstract index against each such lot or parcel in red ink the words, "See Deposit No....." 1916, c. 24, s. 21.

Entry on abstract index.

5.—(1) Where it appears by any certificate of registration endorsed on the document that the same is registered in any other registry division, the registrar with whom the same is deposited shall, within ten days after the deposit, send to such other registrar a notice thereof in duplicate, Form 3.

Notice to be sent to other registry offices where an instrument has been registered.

(2) The registrar receiving the notice shall be entitled to a fee of twenty cents for every document in respect of which he is required to make an entry.

Fees to other registrars.

(3) On receipt of the notice the registrar receiving the same shall enter in the margin of every registry book wherein the document appears to have been registered, opposite the entry thereof, the words, "See deposit index in registry office, No. , 19 ,," referring to the registry office from which the notice is received, and the number and date of the deposit therein, and he shall forthwith send an acknowledgment of the receipt of the notice written upon one of the duplicate notices.

Entry of notice.

Acknowledgment of receipt of notice.

(4) If such an acknowledgment is not received within fourteen days from the sending of the notice the registrar sending the notice shall send another like notice and shall repeat the same every fourteen days till the acknowledgment is received.

Repeating notice until acknowledged.

(5) Every such notice and acknowledgment shall be sent by registered post, and a sufficient sum to pay the registrar's fees and the postage shall be sent with the notice.

Transmission by registered post.

Order in
which notices
to be filed.

(6) All notices received from other registrars shall be filed by the registrar receiving the same in the order in which they are received, and all such acknowledgments shall be filed by the registrar receiving them in the order of their receipt. R.S.O. 1914, c. 125, s. 6.

Registrar's
fees.

6. The registrar with whom the deposit is made shall be entitled to the following fees to be paid at the time of the deposit by the person making the deposit:—

On every requisition	20 cents,
On every document deposited	10 “
For every notice necessary to be sent to other registrars (not more than one notice to any one registrar to be charged for)	15 “
Necessary postage on the notices and acknowledgments.	
A sum sufficient to pay the fees under subsection 2 of section 5.	
For entering upon the abstract index for each lot in excess of 4 lots	5 “

R.S.O. 1914, c. 125, s. 7; 1918, c. 20, s. 24.

Deposit of
receipts.

7.—(1) A receipt for payment of money on any registered instrument may be deposited in the registry office in which the instrument is registered, but it shall not be necessary to deliver any requisition with the receipt or to pay any fee for depositing the same or the entries in respect thereof, except the sum of twenty cents.

Registrar to
receive and
enter.

(2) The registrar shall receive and file in consecutive numerical order all receipts so deposited, and shall endorse thereon the number, the date of deposit, and the amount mentioned in the receipt, and shall write in the margin of the registry book wherein the instrument to which the receipt relates has been registered the words, “See receipt No. _____,” R.S.O. 1914, c. 125, s. 8.

Deposited
documents
open to
inspection.

8. Any person shall be entitled to inspect and make or obtain copies of, or extracts from, any document deposited under this Act in like manner as in the case of instruments registered under *The Registry Act*; and the registrar shall be entitled to the same fees in respect thereof as in the case of registered instruments. R.S.O. 1914, c. 125, s. 9.

Rev. Stat.
c. 155.

Deposit not
registration
and not to
affect docu-
ment as
evidence.
Rev. Stat.
c. 155.

9. The deposit of a document under this Act shall not be deemed a registration thereof within the meaning of *The Registry Act* nor shall the admissibility or value of any document as evidence be affected by the deposit. R.S.O. 1914, c. 125, s. 10.

Deposit re-
lieves from
liability.

10. The deposit of a document under this Act shall, while the document continues so deposited, be deemed a sufficient compliance with, and fulfilment of, any covenant or agreement entered into by any person to produce or allow the

inspection of, or the making of, any copy of or extract from the document, and shall absolve any person liable for the production or custody thereof from any further liability in respect of such custody or production. R.S.O. 1914, c. 125, s. 11.

11. The registrar with whom a document is so deposited shall keep the same safely in his office in like manner and with the same care as the instruments registered in his office; and he and his sureties shall be responsible in respect thereof in like manner as in respect of instruments registered under *The Registry Act*; and the registrar shall not part with the possession of any such document unless in accordance with the order of a court or a judge as hereinafter provided. R.S.O. 1914, c. 125, s. 12.

Registrar to keep safely.

Rev. Stat. c. 155.

12. An executor, administrator or trustee may reimburse himself out of the estate any expense which he incurs in or about depositing any document which may come to his possession or control as such executor, administrator or trustee. R.S.O. 1914, c. 125, s. 13.

Expenses of executors, etc.

13.—(1) At any time within five years after the deposit of a document any person may apply to the Supreme Court or to the county or district court of the county or district in which the deposit is made, or to a judge of either of such courts, for the delivery of the document to such person, and the court or judge may direct that the same shall be delivered by the registrar to the applicant, or to any person the court or judge directs, upon being satisfied that the applicant would, but for the deposit, be solely entitled to the possession of the document, and that the deposit thereof was made without his consent, or the consent of any person entitled at the time of the deposit to any interest therein, and, where the document relates to other land than that in which the applicant is interested, that there are reasonable grounds for removing the document from the custody of the registrar.

Application within 5 years to remove from custody.

(2) Before making the order the court or judge may require such notice of the application, by advertisement or otherwise, to be given to the person by whom the deposit was made, or to any other person, as to the court or judge shall seem meet.

Notice of application.

(3) The order may direct that all or any part of the costs of the application, or of opposing the same, or in relation thereto, be paid by the person by whom the deposit was made, or by the person by whom the application is made, or by any person to whom notice of the application has been given or the court or judge may make such other order in respect of the costs of the applicant, and of the persons who have been notified, or who oppose the application, as may seem just. R.S.O. 1914, c. 125, s. 14.

Costs.

Delivery
under order.

14.—(1) Upon the delivery to the registrar of the order, or a duplicate thereof, within six months after the date thereof, and upon payment to him of the sum of fifty cents, he shall deliver to the person mentioned therein the documents therein directed to be given to him, taking his receipt, or the receipt of his authorized agent therefor.

Registration
of order.

(2) The registrar shall thereupon enter in the deposit index, opposite the entry of the document, the date of such delivery, and the name of the person to whom delivered, the court or judge by whom the order was made, and the date of the order, and shall file the order among the requisitions for deposit in the order of the date of its receipt. R.S.O. 1914, c. 125, s. 15.

FORM 1.

REQUISITION.

To the Registrar of the Registry Division of

I (or we) hereby deposit with you, pursuant to *The Custody of Documents Act*, the following documents:—

Description of document.	Names of all parties.	Any other particulars or subject of certificate, affidavit, etc.	Land in this registry division to which documents relate.	Particulars of registration of registered instruments.			
				Registry division.	Date.	No.	Township, city, town, etc.

Dated

(in duplicate)

Signed in presence of me, to whom the depositor, and his residence and occupation are well known

{ C. D.
Residence, giving Lot, Concession or House No. and Street.
 (Occupation).

A. B.

The documents above mentioned, with a duplicate of the above requisition, are this day received by me.

Dated

E. F.,
Registrar for

R.S.O. 1914, c. 125, Form 1.

FORM 2.

DEPOSIT INDEX.

Deposit No.	Description of document.	Parties.	Land in this registry division mentioned.	Any other particulars or subject of certificates, affidavits, etc.	Particulars of registration certificate endorsed.	Date of deposit.	By whom deposited.

R.S.O. 1914, c. 125, Form 2.

FORM 3.

NOTICE OF DEPOSIT.

To the Registrar of the Registry Division of

The following documents, which appear to be registered in your registry office, have been deposited in this registry office under *The Custody of Documents Act*.

Deposit Index No.	Date of deposit.	Description of document.	Parties.	Particulars of registration in your registry division.		
				Township city, town, etc.	Date of registration.	Registration No.
2146	8th Aug., 19	Mortgage.	John Smith to Wm. Jones.			

You are required to enter such deposit, and to acknowledge receipt hereof, under above Act. I enclose cents for your fees and cents for postage on acknowledgment.

Dated at Registrar for

ACKNOWLEDGMENT TO BE PUT ON DUPLICATE NOTICE.

The duplicate of above notice of deposit of (*three*) documents received at the registry office for this day of , 19 and entry of such deposit has been made in accordance with *The Custody of Documents Act*.

Registrar.

R.S.O. 1914, c. 125, Form 3.

CHAPTER 158.

The Land Titles Act.

Application
of Act.

1. This Act shall, subject to section 148, apply to the County of York, including the City of Toronto; the County of Elgin, including the City of St. Thomas; the County of Ontario; the City of Ottawa and the County of Carleton and to provisional judicial districts only, and the land registries heretofore established for such counties and districts are hereby continued. R.S.O. 1914, c. 126, s. 2.

Interpreta-
tion.

2. In this Act,

"Court."

(a) "Court" shall mean the Supreme Court;

"General
rules."

(b) "General Rules" or "Rules" shall mean the rules made in pursuance of this Act;

"Inspector."

(c) "Inspector" shall mean Inspector of Land Titles Offices, and shall include a person acting as Inspector of Land Titles Offices under the authority conferred by this Act;

"Owner."

(d) "Owner" shall mean owner in fee simple;

"Prescribed."

(e) "Prescribed" shall mean prescribed by this Act or by any general rules made in pursuance of this Act;

"Proper
master of
titles."

(f) "Proper Master of Titles" shall mean the master of titles or local master in whose office the land affected or intended to be affected by any proceeding, instrument or document is or may be registered;

"Regis-
tered."

(g) "Registered" shall mean registered under this Act;

"Sworn
Valuator."

(h) "Sworn Valuator" shall mean a person appointed, with the approval of the Lieutenant-Governor in Council, to value land under this Act. R.S.O. 1914, c. 126, s. 3, *part*.

Exercise of
jurisdiction.

3. Any jurisdiction of the court under this Act may be exercised by a judge of the court whether sitting in court or in chambers. R.S.O. 1914, c. 126, s. 4.

PART I.

ENTRY OF LAND ON REGISTER OF TITLE.

4.—(1) The land registry for the County of York shall be conducted by an officer to be called the master of titles, who shall be a barrister of not less than ten years' standing at the Bar of Ontario, and shall be appointed by the Lieutenant-Governor in Council by commission under the Great Seal.

Land
registry for
County of
York to be
conducted by
master of
titles.
Imp. 38 &
39 V. c. 87,
ss. 5, 106.

(2) The Lieutenant-Governor in Council may appoint a person, being a barrister or solicitor of not less than five years standing, to be the deputy of the master of titles, and the person so appointed shall act under the supervision of the master or in the absence of the master, and when so acting shall have all the powers of the master.

Deputy master
of titles,
appointment
and duties
of.

(3) In case of the death or resignation of the master the deputy may act as master until his authority is revoked.

R.S.O. 1914, c. 126, s. 5.

Powers on
death or
resignation
of master.

5.—(1) Any person entitled for his own benefit at law or in equity to an estate in fee simple in land, whether or not subject to incumbrances, or any person capable of disposing for his own benefit by way of sale of an estate in fee simple in land, whether or not subject to incumbrances, may apply to the proper master of titles to be registered under this Act, or to have registered in his stead any nominee as owner of such land, with an absolute, qualified or possessory title, as the case may be.

Application
for registra-
tion.

Imp. 38 &
39 V. c. 87,
s. 5.

(2) Any person who has contracted to buy for his own benefit an estate in fee simple in land, whether or not subject to incumbrances, may also apply if the vendor consents to the application.

Application
by pur-
chaser.
Imp. 38 &
39 V. c. 87,
s. 5.

(3) The Attorney-General for Canada, or the Attorney-General of Ontario, may apply in like manner in respect to the title of the Crown to any land; and the practice and procedure upon the application shall be the same as in ordinary cases. R.S.O. 1914, c. 126, s. 6.

Application
by Crown.

Imp. 38 &
39 V. c. 87
s. 65.

Trustees and Mortgagees.

6.—(1) Any person holding land on trust for sale, and any trustee, mortgagee or other person having a power of selling land may authorize the purchaser to make an application to be registered as owner with any title with which an owner is authorized to be registered, and may consent to the performance of the contract being conditional on his being so registered; or any of such persons, except a mortgagee, may himself apply to be registered as such owner with the consent of the persons, if any, whose consent is required to the exercise by the applicant of his trust or power of sale.

Trustees,
etc., may
sell by
medium of
registry,
or may be
themselves
registered.

Imp. 38 &
39 V. c. 87,
s. 68.

Application
by a mort-
gagee with
a power
of sale.

(2) A mortgagee having a power of selling land may apply to have the mortgagor or other person owning the equity of redemption registered as owner with any such title.

Costs, etc.,
thereof.

(3) The amount of all costs, charges, and expenses properly incurred by such person, in or about the application, shall be ascertained and declared by the proper master of titles, and shall be deemed to be costs, charges, and expenses properly incurred by such person in the execution of his trust or in pursuance of his power; and he may retain or reimburse the same to himself out of any money coming to him under the trust or power, and he shall not be liable to any account in respect thereof. R.S.O. 1914, c. 126, s. 7.

Reimburse-
ment.

Part Owners.

Registration
of part
owners.

Imp. 38 &
39 V. c. 87,
s. 69.

7.—(1) Any two or more persons entitled concurrently or successively, or partly in one mode and partly in another, to such estates, rights or interests in land as together make up such an estate as would, if vested in one person, entitle him to be registered as owner of the land may, subject as in this Act mentioned with respect to the number of persons to be registered in respect of the same land, apply to the proper master of titles to be registered as joint owners in the same manner and with the same incidents, so far as circumstances admit, in and with which it is in this Act declared that an individual owner may be registered.

Entry on
registration
of part
owners.

(2) Where several persons are so registered as owners the entry may, if the parties so desire, define the estates, rights and interests, other than trust estates, rights and interests, to which the owners are respectively entitled, and such entry may be made either upon first registration or subsequently in case the estates, rights or interests so arise.

What
certificate
part
owners
may take
out.

(3) Persons entitled to several estates, as mentioned in subsection 1, or owners who are tenants in common or joint tenants, shall be entitled to take out one certificate in respect of the whole estate, or each person may, when the extent of his interest is defined, take out a certificate in respect of his own estate; but when a certificate for the whole is outstanding no separate certificate shall be issued till the outstanding certificate is returned and cancelled. R.S.O. 1914, c. 126, s. 8.

Absolute Titles.

Evidence
where absolute
title re-
quired.
Imp. 38 &
39 V. c. 87,
s. 6.

8. Where an absolute title is required the applicant or his nominee shall not be registered as owner of the fee simple unless and until the title is approved by the proper master of titles. R.S.O. 1914, c. 126, s. 9.

9. The first registration of a person as owner of land, in this Act referred to as first registered owner with an absolute title, shall vest in the person so registered an estate in fee simple in such land, together with all rights, privileges and appurtenances belonging or appurtenant thereto, subject as follows,—

Estate of first registered owner with absolute title.

Imp. 38 & 39 V. c. 87, s. 7.

(a) to the incumbrances, if any, entered on the register;

(b) to such liabilities, rights and interests, if any, as are declared for the purposes of this Act not to be incumbrances, unless the contrary is expressed on the register;

(c) where such first registered owner is not entitled for his own benefit to the land registered, then as between him and any persons claiming under him, to any unregistered estates, rights, interests or equities to which such persons may be entitled;

but free from all other estates and interests whatsoever, including estates and interests of His Majesty, which are within the legislative jurisdiction of Ontario. R.S.O. 1914, c. 126, s. 10.

Possessory Titles.

10. Where a possessory title only is required the applicant or his nominee may be registered as owner of the fee simple on giving such evidence of title and serving such notices, if any, as may be prescribed. R.S.O. 1914, c. 126, s. 11.

Evidence where possessory title required. Imp. 38 & 39 V. c. 87, s. 6.

11.—(1) The registration of a person as first registered owner with a possessory title only shall not affect or prejudice the enforcement of any estate, right or interest adverse to or in derogation of the title of such first registered owner, and subsisting or capable of arising at the time of registration of such owner, but shall otherwise have the same effect as registration of a person with an absolute title. R.S.O. 1914, c. 126, s. 12.

Estate of first registered owner with possessory title.

Imp. 38 & 39 V. c. 87, s. 8.

(2) The registered owner of land with a possessory title only may at any time apply to the proper master of titles to be registered as owner of such land with an absolute or qualified title, as the case may be, but the applicant shall not be so registered until the title is approved by the proper master of titles in the same manner as if the application were for first registration under this Act with an absolute or qualified title.

Change from possessory title to absolute or qualified title.

(3) After the expiry of ten years from the date of registration of any person as the registered owner with a possessory title only, the then registered owner of the land may, upon the payment of the prescribed fees, apply to the proper

Application to be registered as absolute or qualified title after ten years.

master of titles to be entered as owner with an absolute or qualified title, as the case may be, and such master may either forthwith, or after requiring such evidence to be furnished and notices to be given as he deems expedient, register such applicant as owner in fee simple with an absolute title or qualified title, as the case may be, subject to such incumbrances, if any, as the condition of the title requires. 1925, c. 41, s. 3.

Qualified Titles.

A qualified title may be registered.

Imp. 38 & 39 V. c. 87, s. 9.

"Qualified title" defined.

Estate of owner registered with a qualified title.

Notice of easement. Imp. 38 & 39 V. c. 87, s. 18, sub. s. d.

Statement of appurtenant easement on certificate, etc.

12.—(1) Where on the examination of the title it appears to the proper master of titles that it can be established only for a limited period, or subject to certain reservations, the master, on the application of the party applying to be registered, may, by an entry made in the register, except from the effect of registration any estate, right or interest arising before a specified date, or arising under a specified instrument, or otherwise particularly described in the register.

(2) A title registered subject to such excepted estate, right or interest shall be called a qualified title.

(3) The registration of a person as first registered owner with a qualified title shall have the same effect as the registration of such person with an absolute title, save that registration with a qualified title shall not affect or prejudice the enforcement of any estate, right or interest appearing by the register to be excepted.

(4) Where the existence of any easement is proved the master may, if he thinks fit, enter notice thereof on the register.

(5) Where title is shown to any easement appurtenant to the land being registered the same may be stated in the entry and certificate of ownership. R.S.O. 1914, c. 126, s. 13.

Certificate of Ownership.

Certificate of ownership given on registration. Imp. 38 & 39 V. c. 87, s. 10.

13. On the entry of the name of the first registered owner of freehold land on the register the proper master of titles shall, if required by the owner, deliver to him a certificate in the prescribed form, in this Act called a "certificate of ownership," which shall state whether the title of the owner therein mentioned is absolute, qualified or possessory. R.S.O. 1914, c. 126, s. 14.

Registry Act not to apply to land under this Act.

Rev. Stat. c. 155.

14.—(1) A certificate by the proper master of titles of the first registration of an owner under this Act shall be registered in the registry division in which the land is situate, and thereafter *The Registry Act* shall cease to apply to such land.

(2) The certificate, besides describing the land, shall state the date of the first registration, the number of the parcel and the register in which the land is registered; and the registrar shall in his abstract index enter the number of the parcel and the register as given in the certificate. R.S.O. 1914, c. 126, s. 15.

Particulars to be stated in certificate for registry office.

PART II.

LEASEHOLD LAND.

15.—(1) A separate register of leasehold land shall be kept and any of the following persons,—

Register of leasehold land.

- (a) any person who has contracted to buy for his own benefit leasehold land held under a lease for a life or lives, or determinable on a life or lives, or for a term of years of which at least twenty-one are unexpired, or in respect of which the lessee or his assigns is or are entitled to a renewal term or succession of terms amounting with the portion unexpired of the current term to at least twenty-one years, or to a renewal for a life or lives, whether or not subject to incumbrances;
- (b) any person entitled for his own benefit, at law or in equity, to leasehold land held under any such lease whether or not subject to incumbrances; and
- (c) any person capable of disposing for his own benefit by way of sale of leasehold land held under any such lease whether or not subject to incumbrances;

Application for registration with or without a declaration of title of lessor to grant lease.

Imp. 38 & 39 V. c. 87, s. 11.

may apply to the proper master of titles to be registered, or to have registered in his stead any nominee as owner of such leasehold land, with the addition, where the lease under which the land is held is derived immediately out of freehold land and the applicant is able to submit for examination the title of the lessor, of a declaration of the title of the lessor to grant the lease under which the land is held;

Provided that, in the case of leasehold land contracted to be bought, the vendor consents to the application.

Proviso.

(2) Every applicant for registration of leasehold land shall deposit with the master the lease in respect of which the application is made or, if such lease is proved to the satisfaction of the master to be lost, a copy of such lease or of a counterpart thereof, verified to the satisfaction of the master, and such lease or verified copy is in this Act referred to as the registered lease.

Deposit of lease with the master. "The registered lease."

Where lease contains prohibition against alienation.

(3) Leasehold land held under a lease containing an absolute prohibition against alienation shall not be registered.

Where alienation permitted by license.

(4) Leasehold land held under a lease containing a prohibition against alienation, without the license of some other person, shall not be registered unless and until provision is made in the prescribed manner for preventing alienation without such license by entry in the register of a restriction to that effect or otherwise.

Sec. 6 to apply to leasehold land.

(5) Section 6 shall apply to leasehold as well as to freehold land. R.S.O. 1914, c. 126, s. 16.

Evidence of title required on application.

Imp. 38 & 39 V. c. 87, s. 12.

16. An applicant or his nominee shall not be registered as owner of leasehold land unless and until the title to such land is approved by the proper master of titles; and if he applies to be registered as owner of leasehold land, with a declaration of the title of the lessor to grant the lease under which the land is held, shall not be registered with such declaration unless and until the lessor, after an examination of his title by the master, is declared to have had an absolute or qualified title to grant the lease under which the land is held. R.S.O. 1914, c. 126, s. 17.

Estate of first registered owner of leasehold land with a declaration of absolute title of lessor to grant lease.

17. The registration of a person as first registered owner of leasehold land, with a declaration that the lessor had an absolute title to grant the lease under which the land is held, shall vest in such person the land comprised in the registered lease relating to such land for all the leasehold estate therein described with all implied or expressed rights, privileges and appurtenances attached to such estate, but subject,

Imp. 38 & 39 V. c. 87, s. 13.

- (a) to all implied and express covenants, obligations and liabilities incident to such leasehold estate;
- (b) to the incumbrances, if any, entered on the register;
- (c) unless the contrary is expressed on the register to such liabilities, rights and interests as affect the leasehold estate and are by this Act declared not to be incumbrances in the case of registered freehold land; and
- (d) where such first registered owner is not entitled for his own benefit to the land registered, then, as between himself and any person for whom he holds or claiming under him, to any unregistered estates, rights, interests or equities to which such person may be entitled;

but free from all other estates and interests whatsoever, including estates and interests of His Majesty, which are within the legislative jurisdiction of Ontario. R.S.O. 1914, c. 126, s. 18.

18. The registration of a person as first registered owner of leasehold land, without a declaration of the title of the lessor, shall not affect or prejudice the enforcement of any estate, right or interest affecting or in derogation of the title of the lessor to grant the lease under which the land is held; but, save as aforesaid, shall have the same effect as the registration of a person as first registered owner of leasehold land with a declaration that the lessor had an absolute title to grant the lease under which the land is held. R.S.O. 1914, c. 126, s. 19.

Estate of first registered owner of leasehold land without a declaration of title of lessor to grant lease.
Imp. 38 & 39 V. c. 87, s. 14.

19.—(1) Where on the examination of the title of a lessor by the proper master of titles it appears to him that the title of such lessor to grant the lease under which the land is held can be established only for a limited period, or subject to certain reservations, the master may, by an entry made in the register, except from the effect of registration any estate, right or interest arising before a specified date or arising under a specified instrument, or otherwise particularly described in the register; and a title of a lessor subject to such excepted estate, right or interest shall be deemed a qualified title.

Lessor may be declared to have a qualified title to grant lease.
Imp. 38 & 39 V. c. 87, s. 15.

(2) The registration of a person as first registered owner of leasehold land, with a declaration that the lessor had a qualified title to grant the lease under which the land is held, shall have the same effect as the registration of such person with a declaration that the lessor had an absolute title to grant the lease under which the land is held, save that registration with the declaration of a qualified title shall not affect or prejudice the enforcement of any right or interest appearing by the register to be excepted. R.S.O. 1914, c. 126, s. 20.

Effect of registration as first registered owner of leasehold land.

20. On the entry of the name of the first registered owner of leasehold land on the register the proper master of titles shall, if required by the owner, deliver to him a copy of the registered lease, in this Act called an office copy, authenticated in the prescribed manner, and there shall be endorsed thereon a statement whether any declaration, absolute or qualified, as to the title of the lessor has been made, and any other particulars relating to such lease entered in the register. R.S.O. 1914, c. 126, s. 21.

Office copy of lease given on registration.
Imp. 38 & 39 V. c. 87, s. 16.

PART III.

REGISTRATION, HOW EFFECTED.

21. The examination of a title shall be conducted in the prescribed manner, subject to the following provisions:

Regulations as to examination of title by master.

- (a) Due notice shall be given where the giving of such notice is prescribed and sufficient opportunity shall be afforded to any person desirous of object-

Imp. 38 & 39 V. c. 87, s. 17.

ing to come in and state his objections to the proper master of titles;

- (b) The master shall have jurisdiction to hear and determine any such objections, subject to an appeal to the Court in the prescribed manner and on the prescribed conditions;
- (c) If the master, upon the examination of any title, is of opinion that it is open to objection, but is nevertheless a title the holding under which will not be disturbed, he may approve of it or may require the applicant to apply to the Court, upon a statement signed by the master, for its sanction to the registration;
- (d) It shall not be necessary to produce any evidence which, by *The Vendors and Purchasers Act*, is dispensed with as between vendor and purchaser, or to produce or account for the originals of any registered deeds, documents or instruments unless the master otherwise directs;
- (e) The master may receive and act upon any evidence which is received in court on a question of title, or any evidence which the practice of conveyancers authorizes to be received on an investigation of a title out of court, or any other evidence, whether the same is or is not receivable or sufficient in point of strict law, or according to the practice of conveyancers, if the same satisfies him of the truth of the facts intended to be made out thereby;
- (f) The master may refer to and act upon not only the evidence adduced before him in the proceeding in which such evidence is adduced but also any evidence adduced before him in any other proceeding wherein the facts to which such evidence relates were or are in question; R.S.O. 1914, c. 126, s. 22;
- (g) The master may, also, act upon his own personal knowledge of material facts affecting the title upon making and filing a report, stating his knowledge of the particular facts and the means he had of obtaining such knowledge. 1925, c. 41, s. 4.

Rev. Stat.
c. 153.

Master may
act on
personal
knowledge.

Employment
of Counsel
for exam-
inations of
titles.
Imperial
L. T. Rules,
1903, Nos.
36 and 313.

22. The Lieutenant-Governor in Council may name one or more barristers to whom the master of titles may refer the examination of the title, in whole or in part, of any land in respect of which an application is made, and the master may act upon the opinion of such referee. R.S.O. 1914, c. 126, s. 23.

23.—(1) All registered land, unless the contrary is expressed on the register, shall be subject to such of the following liabilities, rights and interests as for the time being may be subsisting in reference thereto, and such liabilities, rights and interests shall not be deemed incumbrances within the meaning of this Act:

- (a) Provincial taxes and succession duty and municipal taxes, charges, rates or assessments, and school or water rates; Liability of registered land to easements and certain other rights. Imp. 38 & 39 V. c. 87, s. 18.
- (b) Any right of way, water-course, and right of water, and other easements; Land to be registered subject to taxes.
- (c) Any title or lien which, by possession or improvements, the owner or person interested in any adjoining land has acquired to or in respect of the registered land; Easements.
- (d) Any lease or agreement for a lease, for a period yet to run which does not exceed three years, where there is actual occupation under it; Liens of adjoining owners.
- (e) Any right of the wife or husband of the person registered as owner to dower or curtesy, as the case may be, in case of surviving such owner; Leases.
- (f) A mechanic's lien where the time limited for the registration thereof has not expired; R.S.O. 1914, c. 126, s. 24 (1), cls. (a-f). Dower or curtesy.
- (g) Any right of expropriation, access or user or any other right, conferred upon or reserved to or vested in the Crown by or under the authority of any Statute of the Dominion of Canada, or of Ontario; 1925, c. 41, s. 5. Mechanics' liens.
- (h) Any public highway. R.S.O. 1914, c. 126, s. 24 (1), cl. (h). Statutory rights.

(2) The description of the land in the entry of ownership shall not, as against adjoining owners, be conclusive as to the boundaries or extent thereof. R.S.O. 1914, c. 126, s. 24 (2). Description not conclusive against adjoining owners.

(3) Where a license under *The Crown Timber Act* has been or shall be granted, and the land is registered under this Act, the same shall be deemed to have been and to be subject to the rights of the licensee or his assigns for the current license year under the license, and to the rights of His Majesty in the pine trees under *The Public Lands Act*, without the fact of such land being so subject being expressed in the entry in the register, or in the certificate of ownership. R.S.O. 1914, c. 126, s. 24 (3), *part*. Effect of registration of land upon timber licenses. Rev. Stat. c. 38. Rev. Stat. c. 35.

Where applicant desires certificate free from (a)-(e) of s. 23 (1).

24.—(1) If the applicant desires the certificate to declare the title to be free from the first five of the particulars mentioned in subsection 1 of the next preceding section, or any of them, his application shall so state, and the investigation shall proceed accordingly.

Notice of application to have certificate free from highway.

(2) Where the applicant desires that the land shall be registered free from any public highway a notice so stating shall be published once a week for two successive weeks in a newspaper published in the municipality in which the land lies or where there is no such newspaper in one published in a neighbouring municipality, and the notice shall also be served upon the Attorney-General and upon the head or the clerk of the council of the municipality in which the land lies.

Trial of right of highway in Supreme Court.

(3) If the Attorney-General or the corporation of the municipality or any person objects to the land being so registered the Attorney-General or such corporation or person may in his objection require that the question of the existence of the highway be tried in the Supreme Court, and in that case the master shall postpone his finding upon that part of the application until the question is finally determined, and shall give such directions as he may deem proper in order that an early adjudication thereon may be had.

Master may direct action or issue.

(4) Notwithstanding that the Attorney-General or the corporation or person objecting has not required the question to be tried in the Supreme Court the master of his own motion or upon the application of either party, may direct that an action be brought or an issue be tried in the Supreme Court for the determination of the question on such terms and conditions as to costs and otherwise as he may deem just.

Registration pending decision and subsequent variation of entry.

(5) The master pending the final decision of the question may register the applicant as owner, subject to any public highway and upon the final determination of the question if it is determined in favour of the applicant the entry and certificate of ownership shall be varied in accordance therewith. R.S.O. 1914, c. 126, s. 25.

Mortgages existing at First Registration.

Lands subject to mortgage at time of registration.

25.—(1) Where land is registered subject to mortgages existing thereon at the time of the first registration the mortgages shall be noted in the register in the same order as they are registered in the registry office if such mortgages have been so registered, or the dates of the respective registrations thereof shall be stated, but this shall not be taken as an affirmation that such mortgages rank in the order in which they were registered or in the order in which they are noted.

Abstracts of instruments dealing with same.

(2) Abstracts of all instruments dealing with such mortgages shall thereafter be entered in the register, and the entry thereof shall be deemed the registration of the instrument,

and the rights of the parties interested or claiming to be interested in any such mortgage so far as it affects land under this Act shall, subject to sections 9 to 12 and 41 to 44, be decided under the registry law as if the registrations in the office of land titles had been made under *The Registry Act*. Rev. Stat. c. 155.
R.S.O. 1914, c. 126, s. 26.

Determination of Incumbrances or Leases existing at First Registration.

26.—(1) Where upon the first registration of land notice of any incumbrance affecting such land has been entered on the register the proper master of titles, on proof to his satisfaction of the discharge of such incumbrance, shall note in the prescribed manner on the register, by cancelling the original entry or otherwise, the cessation of such incumbrance and thereupon the incumbrance shall cease. Complete or partial discharge of incumbrance. Imp. 38 & 39 V. c. 87, s. 19.

(2) On the requisition or certificate of a mortgagee whose mortgage was entered on the register on the first registration of the land, or the registered assignee thereof, or of the personal representative of such mortgagee or assignee, authorizing or certifying the discharge of the whole or any part of the land therefrom, or the discharge of the whole or any part of the money thereby secured, the master may note on the register the discharge of such land from the mortgage or the discharge of such part of the money, and thereupon, as to the land or money discharged, the incumbrance shall cease. Note of discharge on requisition of mortgagee.

(3) The death of the person who signed the requisition or certificate shall not revoke or otherwise affect the same. R.S.O. 1914, c. 126, s. 27. Death of person after signing requisition.

27. The proper master of titles, on proof to his satisfaction of the determination of any lease of registered land existing at the first registration, shall note in the prescribed manner on the register the determination of such lease. R.S.O. 1914, c. 126, s. 28. Determination of lease. Imp. 38 & 39 V. c. 87, s. 20.

Adverse Possession as against Registered Owner.

28.—(1) A title to any land adverse to or in derogation of the title of the registered owner shall not be acquired by any length of possession. No title by adverse possession. Imp. 38 & 39 V. c. 87, s. 21.

(2) This section shall not prejudice, as against any person registered as first owner of land with a possessory title only, any adverse claim in respect of length of possession of any other person who was in possession of the land at the time when the registration of such first owner took place. R.S.O. 1914, c. 126, s. 29. Operation of section.

PART IV.

TRANSFER AND CHARGE OF REGISTERED LAND.

Charge of Registered Land.

Creation of
charges.

Imp. 38 & 39
V. c. 87,
s. 22.

29.—(1) Every registered owner may in the prescribed manner charge the land with the payment at an appointed time of any principal sum of money either with or without interest, or as security for any other purpose, and with or without a power of sale.

Charge how
completed.

(2) The charge shall be completed by the proper master of titles entering on the register the person in whose favour the charge is made as the owner of the charge, stating the amount of the principal sum which the charge secures, with the rate of interest and the periods of payment, or the other purpose for which the charge is given.

Where
charge con-
tains power
of sale.

(3) Where the charge contains a power of sale that fact shall be stated, but the particulars need not be set out in the register, nor shall it be necessary to set forth incidental matters which may be expressly charged, such as costs of inspection, or of abortive attempts to sell and the like.

Effect of
charge
when
registered.

(4) The charge, when registered, shall confer upon the chargee a charge upon the interest of the chargor as appearing in the register subject to the incumbrances and qualifications to which such interest is subject, but free from any unregistered interests in the land.

Delivery of
certificate
to owner
of charge.

Rev. Stat.
c. 155.

(5) The master shall also, if required, deliver to the owner of the charge a certificate of charge in the prescribed form.

(6) The provisions of section 73 of *The Registry Act* shall apply to the charge as if it was a registered mortgage. R.S.O. 1914, c. 126, s. 30.

Implied
covenant
to pay
charges

Imp. 38 & 39
V. c. 87,
s. 23.

30.—(1) Where a registered charge is created there shall be implied on the part of the registered owner, at the time of the creation of the charge, his heirs, executors and administrators, unless there is an entry on the registry negating the implication, covenants with the registered owner for the time being of the charge:

(a) To pay the principal sum charged and interest, if any, thereon at the appointed time and rate; and all taxes, rates, charges, rents, statute labour or other impositions theretofore or thereafter imposed or charged on the land, and that in case of default all payments made by the owner of the charge may be added to the principal sum and bear interest;

- (b) If the principal sum or any part thereof is unpaid at the appointed time to pay interest half yearly at the appointed rate on so much of the principal sum as for the time being remains unpaid.

(2) Where a charge, whether or not under seal, is expressed to be made in pursuance of *The Short Forms of Mortgages Act*, or refers thereto, and contains any form of words contained in clauses numbered 1, 2, 3, 7, 8, 12, 14, 15 or 16 of column one of Schedule B to that Act, whether expressed in the first or third person, such words shall have the same meaning and effect as the words under the corresponding number in column two in that schedule; and the provisions of that Act shall apply to the charge. R.S.O. 1914, c. 126, s. 31.

(3) Where in a charge made in pursuance of *The Short Forms of Mortgages Act* there is inserted the provision that the mortgagee may distrain for arrears of interest such provision shall confer upon the chargee the same right of distress as would be conferred upon a mortgagee of land not under the provisions of this Act. 1927, c. 39, s. 2.

31. Where a registered charge is created on any leasehold land there shall be implied on the part of the registered owner of such leasehold land, at the time of the creation of the charge, his heirs, executors, and administrators, unless there is an entry on the register negating the implication, covenants with the registered owner for the time being of the charge,—

- (a) that the registered owner of such leasehold land, at the time of the creation of the charge, his executors, administrators or assigns will pay, perform and observe the rent, covenants and conditions by and in the registered lease reserved and contained, and on the part of the lessee to be paid, performed and observed; and

- (b) will keep the owner of the charge, his executors, administrators and assigns indemnified against all actions, suits, expenses and claims on account of the non-payment of such rent, or any part thereof, or the breach of such covenants or conditions or any of them. R.S.O. 1914, c. 126, s. 32.

32. Subject to any entry to the contrary on the register the registered owner of a registered charge, for the purpose of obtaining satisfaction of any money due to him under the charge, at any time during the continuance of his charge, may enter upon the land charged, or any part thereof, or into the receipt of the rents and profits thereof, subject nevertheless to the right of any persons appearing on the register to be prior incumbrancers, and to the liability attached to a mortgagee in possession. R.S.O. 1914, c. 126, s. 33.

Foreclosure
by owner
of charge.

Imp. 38 & 39
V. c. 87,
s. 26.

Remedy of
owner of
charge with
a power of
sale.

Imp. 38 & 39
V. c. 87,
s. 27.

Priority of
registered
charges.

Imp. 38 & 39
V. c. 87,
s. 28.

Discharge
of incum-
brance.

Imp. 38 & 39
V. c. 87,
s. 28.

Note of
cessation
of other
incumbrances.

Partial
cessation
of charge.

Death of
person
certifying
to cessation
of charge.

Transfer of
land.

Registering
transferee
as owner.

Imp. 38 & 39
V. c. 87,
s. 29.

33. Subject to any entry to the contrary on the register the registered owner of a registered charge may enforce it by foreclosure or sale in the same manner and under the same circumstances in and under which he might enforce the same if the land had been transferred to him by way of mortgage, subject to a proviso for redemption. R.S.O. 1914, c. 126, s. 34.

34. Subject to any entry to the contrary on the register the registered owner of a registered charge with a power of sale, in accordance with the terms of the power, may sell and transfer the interest in the land which is the subject of the charge, or any part thereof, in the same manner as if he were the registered owner of the land to the extent of such interest therein. R.S.O. 1914, c. 126, s. 35.

35. Subject to any entry to the contrary on the register registered charges on the same land shall as between themselves rank according to the order in which they are entered on the register, and not according to the order in which they are created. R.S.O. 1914, c. 126, s. 36.

36.—(1) The proper master of titles shall, on the requisition of the registered owner of any land and on due proof of the satisfaction of a charge thereon, or may, on the requisition of the registered owner of a charge or of his personal representative or on his certificate of the satisfaction thereof, note on the register in the prescribed manner, by cancelling the original entry or otherwise, the cessation of the charge, and thereupon the charge shall cease.

(2) The master may in like manner and with the like effect note the cessation of any other incumbrance.

(3) On the requisition or certificate of the registered owner of a charge, or of the personal representative of such owner authorizing or certifying the discharge of any part of the land therefrom or the discharge of any part of the money thereby secured, the master may note on the register the discharge of such land from the charge or the discharge of such part of the money and thereupon as to the land or money discharged the charge shall cease.

(4) The death of the person who signed the requisition or certificate shall not revoke or otherwise affect the same. R.S.O. 1914, c. 126, s. 37.

Transfers after Land is Brought Under this Act.

37.—(1) Every registered owner may, in the prescribed manner, transfer the land or any part thereof.

(2) The transfer shall be completed by the proper master of titles entering on the register the transferee as owner of the land transferred, and until such entry is made the transferor shall be deemed to remain owner of the land.

(3) Upon completion of the registration of the transferee the master shall, if required, deliver to him a certificate of ownership in the prescribed form. Delivery to transferee of certificate of ownership.

(4) Where part only of the land is transferred the master shall also, if required, deliver to the transferor a certificate of ownership containing a description of the land retained by him. R.S.O. 1914, c. 126, s. 38. Where part only is transferred.

38.—(1) Any person who is entitled to have a transfer or charge entered on the register shall have the right to require the holder of the certificate of ownership, if any is outstanding, to produce the certificate to the proper master of titles, or to deliver it to such person for production for the purpose of having all proper entries or alterations made thereon by the master, or for cancellation when the certificate has become effete. Right to compel production of certificate of ownership.

(2) A person entitled to have a cessation of a charge entered shall have the right to have an outstanding certificate of ownership of the charge produced in like manner in order that it may be cancelled. R.S.O. 1914, c. 126, s. 39. Certificates of ownership of a charge which has ceased.

39.—(1) Where, upon an application for the registration of a charge or of a transfer of any land or charge, the proper master of titles considers it expedient to require the production of the certificate of ownership, either for the purpose of identifying the person dealing with the land or charge or for cancellation when the same ought to be cancelled or for any other purpose, he may do so, and may decline to enter the charge or transfer on the register until the certificate has been produced, and if the certificate is not produced within such time as the master limits he may return the transfer or charge. R.S.O. 1914, c. 126, s. 40. Master may require production of certificate of ownership.

(2) Where a master declines to register an instrument on account of any deficiency or irregularity therein, or for want of evidence deemed by him to be requisite or for any other reason, and the person desiring registration after having been given such time as shall in the master's opinion afford a reasonable opportunity to comply with the master's requirements, fails to do so and fails to successfully appeal from the master's decision, the master may proceed with other registrations affecting the land as if no such instrument had been presented for registration, and he shall not be affected with notice of the contents of any instrument which he has declined to register as aforesaid. 1914, c. 24, s. 1. Where master declines to register instrument, or to register except upon conditions and applicant fails to appeal or comply.

40. Where registered land is transferred to trustees under *The Religious Institutions Act* the trustees shall be registered as owners in the usual manner and by their corporate name without setting out the purposes or trusts on which the land is held, but a note shall be made by the proper master of Transfers to trustees under Rev. Stat. c. 344.

titles that the land is only to be transferred or charged in accordance with the provisions of that Act. R.S.O. 1914, c. 126, s. 41.

Estate of transferee for valuable consideration of land with absolute title.
Imp. 38 & 39
V. c. 87,
s. 30.

41. A transfer for valuable consideration of land registered with an absolute title, when registered, shall confer on the transferee an estate in fee simple in the land transferred, together with all rights, privileges and appurtenances belonging or appurtenant thereto, subject to,—

- (a) the incumbrances, if any, entered or noted on the register; and
- (b) such liabilities, rights and interests, if any, as are declared for the purposes of the Act not to be incumbrances unless the contrary is expressed on the register;

and as to such rights, privileges and appurtenances, subject also to any qualification, limitation or incumbrance to which the same are expressed to be subject in the register, or where such rights, privileges and appurtenances are not registered, then subject to any qualification, limitation or incumbrance to which the same are subject at the time of the transfer; but free from all other estates and interests whatsoever, including estates and interests of His Majesty, which are within the legislative jurisdiction of Ontario. R.S.O. 1914, c. 126, s. 42.

Estate of transferee for valuable consideration of land with qualified title.

Imp. 38 & 39
V. c. 87,
s. 31.

42. A transfer for valuable consideration of land registered with a qualified title, when registered, shall have the same effect as a transfer for valuable consideration of the same land registered with an absolute title, save that such transfer shall not affect or prejudice the enforcement of any right or interest appearing by the register to be excepted. R.S.O. 1914, c. 126, s. 43.

Estate of transferee for valuable consideration of land with possessory title.

Imp. 38 & 39
V. c. 87,
s. 32.

43. A transfer for valuable consideration of land registered with a possessory title shall not affect or prejudice the enforcement of any right or interest adverse to or in derogation of the title of the first registered owner, and subsisting, or capable of arising, at the time of the registration of such owner; but otherwise, when registered, shall have the same effect as a transfer for valuable consideration of the same land registered with an absolute title. R.S.O. 1914, c. 126, s. 44.

Estate of voluntary transferee of land.

Imp. 38 & 39
V. c. 87,
s. 33.

44. A transfer of registered land, made without valuable consideration, shall be subject, so far as the transferee is concerned, to any unregistered estates, rights, interests or equities subject to which the transferor held the same; but otherwise, when registered, in all respects, and in particular as respects any registered dealings on the part of the transferee, shall have the same effect as a transfer of the same land for valuable consideration. R.S.O. 1914, c. 126, s. 45.

Claims for Dower.

45.—(1) Where it is claimed that registered land is free from dower on account of the land being held in trust, or for some reason other than the wife's release of her dower by an instrument which can be produced and registered, and evidence to that effect which appears satisfactory is produced before the proper master of titles, he may issue a notice requiring the wife to support her right if she claims to be entitled to dower in the land; and if she fails to do so the master may enter on the register a memorandum that the land is free from dower, and such entry shall, unless reversed on appeal, be a bar to any claim by such wife; and no appeal shall lie unless the wife claims her right of dower before the master.

Claim that
land is
free from
dower.

(2) This section shall also apply to the widow of a former owner. R.S.O. 1914, c. 126, s. 46.

Dower of
widow of
former
owner.

46. Where registered land is transferred subject to a charge, or where the registered owner of land which is subject to a charge subsequently marries, the wife of the transferee or owner shall have the same rights in respect of dower as she would have had if the legal estate had been transferred by an ordinary mortgage and no others. R.S.O. 1914, c. 126, s. 47.

Dower in
case of trans-
fer of incum-
bered land.

Transfers of Leaseholds.

47.—(1) Every registered owner of leasehold land may, in the prescribed manner, transfer the whole of his estate in such land or in any part thereof.

Transfer of
leasehold
land.
Imp. 38 & 39
V. c. 87,
s. 34.

(2) The transfer shall be completed by the proper master of titles entering on the register the transferee as owner of the leasehold land transferred, but until such entry is made the transferor shall be deemed to remain owner.

Until
registration
transferor
to be
deemed
owner.

(3) Upon completion of the registration of the transferee, if the transfer includes the whole of the land comprised in the registered lease relating to such land, the transferee shall be entitled to the office copy of the registered lease.

Upon regis-
tration trans-
feree to be
entitled
to office
copy of
lease.

(4) If a part only is transferred the master, if required according to any agreement that has been entered into between the transferor and transferee, shall deliver to the one the office copy of the registered lease and to the other a fresh office copy of such lease, each of such copies showing, by endorsement or otherwise, the parcels of which the person to whom such copy is delivered is the registered owner. R.S.O. 1914, c. 126, s. 48.

Where
part only
transferred.

Estate of transferee for valuable consideration of leasehold land with a declaration of absolute title of lessor.
Imp. 38 & 39 V. c. 87, s. 35.

48. A transfer for valuable consideration of leasehold land registered with a declaration that the lessor had an absolute title to grant the lease under which the land is held, when registered, shall vest in the transferee the land transferred for all the leasehold estate described in the registered lease relating to such land and then unexpired, with all implied or expressed rights, privileges, and appurtenances attached to such estate, but subject to

- (a) all implied and express covenants, obligations, and liabilities incident to such estate;
- (b) the incumbrances, if any, entered or noted on the register; and
- (c) such liabilities, rights and interests as affect the leasehold estate and are by this Act declared for the purposes of the Act not to be incumbrances in the case of registered freehold land unless the contrary is expressed on the register;

but free from all other estates and interests whatsoever, including any estates and interests of His Majesty, which are within the legislative jurisdiction of Ontario. R.S.O. 1914, c. 126, s. 49.

Estate of transferee for valuable consideration of leasehold land without a declaration of title of lessor.

Imp. 38 & 39 V. c. 87, s. 37.

49. A transfer for valuable consideration of leasehold land, registered without a declaration of the title of the lessor, shall not affect the enforcement of any estate, right or interest affecting or in derogation of the title of the lessor to grant the lease under which the land is held; but otherwise, when registered, shall have the same effect as a transfer for valuable consideration of the same land registered with a declaration that the lessor had an absolute title to grant the lease under which the land is held. R.S.O. 1914, c. 126, s. 50.

Estate of transferee for valuable consideration of leasehold land with a declaration of qualified title of lessor.

Imp. 38 & 39 V. c. 87, s. 36.

50. A transfer for valuable consideration of leasehold land, registered with a declaration that the lessor had a qualified title to grant the lease under which the land is held, when registered, shall have the same effect as a transfer for valuable consideration of the same land registered with a declaration that the lessor had an absolute title to grant the lease under which the land is held, save that such transfer shall not affect or prejudice the enforcement of any right or interest appearing by the register to be excepted from the effect of registration. R.S.O. 1914, c. 126, s. 51.

Estate of voluntary transferee of leasehold land.

Imp. 38 & 39 V. c. 87, s. 38.

51. A transfer of registered leasehold land made without valuable consideration shall be subject, so far as the transferee is concerned, to any unregistered estates, rights, interests or equities subject to which the transferor held the same; but otherwise, when registered, in all respects and in particular as respects any registered dealings on the part of the transferee, shall have the same effect as a transfer of the

same land for valuable consideration. R.S.O. 1914, c. 126, s. 52.

52. On the transfer of any registered leasehold land, unless there is an entry on the register negating such implication, there shall be implied

Implied
covenants on
transfer of
leasehold
estates.

(a) on the part of the transferor a covenant with the transferee that, notwithstanding anything by such transferor done, omitted or knowingly suffered, the rents, covenants and conditions reserved and contained by and in the registered lease, and on the part of the lessee to be paid, performed, and observed, have been so paid, performed, and observed up to the date of the transfer; and

Imp. 38 & 39
V. c. 87,
s. 39.

(b) on the part of the transferee a covenant with the transferor that the transferee, his executors, administrators or assigns will pay, perform, and observe the rents, covenants and conditions by and in the registered lease reserved and contained, and on the part of the lessee to be paid, performed and observed, and will keep the transferor, his executors, administrators and assigns indemnified against all actions, suits, expenses and claims on account of the non-payment of the rent or any part thereof, or the breach of the covenants or conditions or any of them. R.S.O. 1914, c. 126, s. 53.

Transfer of Charges.

53.—(1) The registered owner of a charge may, in the prescribed manner, transfer such charge to another person as owner.

Transfer of
charges on
register.
Imp. 38 & 39
V. c. 87,
s. 40.

(2) The transfer shall be completed by the proper master of titles entering on the register the transferee as owner of the charge transferred.

Transfer
completed by
entry on
register.

(3) The transfer, when registered, shall confer upon the transferee the ownership of the charge free from any unregistered interests therein, and the transfer of part of the sum secured by a charge shall confer upon the transferee the ownership of such part free from any unregistered interests therein.

Effect of
registration
of transfer.

(4) Every transfer of a charge shall be subject to the state of account upon the charge between the chargor and the chargee.

As between
chargor and
chargee.

(5) The master shall also, if required, deliver to the transferee a fresh certificate of charge.

Delivery
of fresh
certificate.

(6) The transferor shall be deemed to remain owner of such charge until the name of the transferee is entered on the register in respect thereof.

Until regis-
tration trans-
feror to
be deemed
owner of
charge.

Transfer of
part of a
charge.

(7) The registered owner of a charge may transfer a part of the sum secured by the charge, and the part so transferred may be given priority over the remaining part, or may be deferred or may continue to rank equally with it as may be stated in the transfer. R.S.O. 1914, c. 126, s. 54.

Time of Registration.

Priority.

54. The day, hour and minute of the receipt of each instrument and copy of writ shall be noted thereon, and for the purpose of priority between chargees, transferees and others the time of the receipt shall be deemed the time of registration. R.S.O. 1914, c. 126, s. 55.

Instrument
to show
address of
grantee or
chargee.

55.—(1) Each instrument under this Act shall by endorsement thereon show the full name and place of residence, giving the street number (if any) of the grantee or chargee, as the case may be.

Master of
titles to
furnish clerk
or assess-
ment com-
missioner
with list of
conveyances
upon
request.

(2) The master of titles shall, upon request of the council of a municipality, furnish to the clerk or to the assessment commissioner or assessor of the municipality a list of all conveyances whereby land in the municipality has been transferred, which have been registered in his office during the next preceding year or any part thereof, and any such list shall include the names of the grantor, the grantee or chargee, and place of residence of each, the consideration shown in each instrument and a short, but definite description of the land transferred or charged, but shall not include leases for less than twenty-one years.

Fee for
making list.

(3) A fee of five cents shall be payable with respect to every conveyance entered in the list. 1923, c. 28, s. 2; 1927, c. 39, s. 3.

Transmission of Land and Charges on Owner's Death.

Transmis-
sion on death
of owner of
freehold land.

Imp. 38 & 39
V. c. 87,
s. 41.

56. On the death of the sole registered owner, or of the survivor of several joint registered owners, of any freehold land such person shall be registered as owner in the place of the deceased owner or owners as may, on the application of any person interested in such land, be appointed by the proper master of titles, regard being had to the rights of the several persons interested in the land, and in particular to the selection of any such persons as may for the time being appear to the master to be entitled, according to law, to be so appointed, subject to an appeal to the Court in the prescribed manner by any person aggrieved by any order of the master under this section. R.S.O. 1914, c. 126, s. 56.

Transmission
on death of
owner of
leasehold
land or of
charge.

Imp. 38 & 39
V. c. 87,
s. 42.

57. On the death of the sole registered owner, or of the survivor of several joint registered owners, of any leasehold land or of any charge the executor or administrator of such sole deceased owner, or of the survivor of such joint owners, shall be entitled to be registered as owner in his place. R.S.O. 1914, c. 126, s. 57.

58. Where two or more persons holding as tenants in common have been entered as owners of any land or charge, and one of them dies, his personal representative or such other person as may be entitled to the share of the deceased, may be entered as owner with the survivor or survivors. 1918, c. 28, s. 2.

Entry of
representa-
tives of
deceased
tenant in
common.

59. Any person registered in the place of a deceased owner or to whom a patent is issued as executor or administrator or in any representative capacity shall hold the land or charge, in respect of which he is registered, upon the trusts and for the purposes to which the same is applicable by law, and subject to any unregistered estates, rights, interests, or equities subject to which the deceased owner held the same; but otherwise in all respects, and in particular as respects any registered dealings with such land or charge, he shall be in the same position as if he had taken such land or charge under a transfer for a valuable consideration. R.S.O. 1914, c. 126, s. 59; 1927, c. 39, s. 4.

Nature of
title of
registered
fiduciary
owners.

Imp. 38 & 39
V. c. 87,
s. 46.

60. The fact of any person having become entitled to any land or charge in consequence of the death of any registered owner shall be proved in the prescribed manner. R.S.O. 1914, c. 126, s. 60.

Evidence of
transmission
of registered
ownership.
Imp. 38 & 39
V. c. 87,
s. 47.

61. Where an heir or devisee applies to be entered as owner of any registered land which has vested in him under *The Devolution of Estates Act* the proper master of titles shall make such entry without reference to the liability of the land for debts, except under executions, copies of which have been duly lodged; and the liability under that Act of such land or any transferor thereof shall be determined as if such land had not been registered under this Act. R.S.O. 1914, c. 126, s. 61.

Entry of
heir or de-
visee with-
out reference
to debts of
estate.

Rev. Stat.
c. 148.

Executions and Sale Thereunder.

62.—(1) The sheriff or other officer to whom the same is directed forthwith after the delivery to him of any execution or other writ, or renewal thereof, affecting registered land, upon written request of the party by whom such execution or other writ was sued out or renewed, or of his solicitor, but not otherwise, shall deliver or transmit by registered post to the proper master of titles a copy of the writ certified under his hand; and no registered land shall be bound by any such writ until such copy has been received by the master; and after the receipt by him of the copy no transfer by the execution debtor shall be effectual, except subject to the rights of the execution creditor under the writ.

Notice of
executions.

(2) The master shall keep a book in the prescribed form in which shall be entered a record of all writs, copies of which are received by him from the sheriff or other officer.

Record of
same.

Transfer be-
fore entry
void as
against
purchaser.

(3) No sale or transfer under any such writ shall be valid as against a person purchasing for valuable consideration before such entry is made, notwithstanding that the purchaser may have had notice of the writ.

Entry of
satisfaction
of writ.

(4) Upon production to the master of sufficient evidence of the satisfaction of any such writ he shall cause an entry to be made in the book to that effect, and on such entry the writ shall be deemed to be satisfied.

When writ
to be pre-
sumed to be
spent.

(5) Every writ and renewal of a writ shall be presumed to have been spent, and the delivery or transmission of a copy thereof shall cease to have effect at the expiration of the writ or renewal as appearing on the copy transmitted; but if there has been a sufficient commencement of the execution to enable it to be completed by the sale and conveyance of the land under the writ, and the same has not been completely executed, the sheriff or officer shall, or the execution creditor may, at any time within one month before the expiration of the writ or renewal as so appearing, file with the master a certificate of the sheriff or officer stating that fact, and such certificate shall be noted at the entry of the writ in the book, and the writ shall continue in force for a further period of one year from the filing of the certificate when it shall cease to have effect unless another similar certificate is filed which shall operate in like manner.

Notice of
master
where writ
issues
against
owner under
a different
name from
that on the
register.

(6) Where an execution or other writ is issued against the registered owner under a different name from that under which he is registered the writ shall have no effect under this Act, unless the person who sues out the writ, or his solicitor, gives a notice to the master stating the name under which the execution debtor is registered, and otherwise in the form or to the effect prescribed, or unless a like notice is written upon the copy of the writ.

Fee to
sheriff:

(7) The sheriff or other officer shall be entitled to a fee of fifty cents for each copy of writ or certificate transmitted by him. R.S.O. 1914, c. 126, s. 62.

Provision
in case it is
claimed that
land is not
affected by
a writ appar-
ently affect-
ing same.

63. Where a transferor or transferee of land, or maker or owner of a charge, claims that a writ apparently affecting land does not affect the land or charge he shall produce such evidence thereof as the proper master of titles may consider necessary, and the master may require all parties interested to be notified of the application to register freed from the writ, and may himself decide the question or may direct an issue to be tried or a case to be stated and may make such order as to costs as he deems just. R.S.O. 1914, c. 126, s. 63.

Seizure
ineffectual
until
certificate by
sheriff.

64.—(1) The seizure under execution or other process of a mortgage or charge, or of leasehold land registered under this Act, shall not take effect until a certificate of the sheriff

or other officer that he has taken such mortgage, charge or leasehold land under such process against the registered owner thereof is lodged with the proper master of titles.

(2) The certificate shall state the number of the parcel under which the land affected is registered and the name of the owner, and shall be noted by the master in the register. Contents of certificate.

(3) This section shall not apply where the proceedings prescribed by section 24 of *The Execution Act* have been taken with respect to a mortgage or charge. R.S.O. 1914, c. 126, s. 64. Application of section. Rev. Stat. c. 112.

65. Where any registered freehold or leasehold land is sold under execution or other process the proper master of titles, upon the production to him of the transfer of the same by the sheriff or other officer in the prescribed form, with proof of the due execution thereof, shall cause a notice to be mailed to the proper post-office address of the person whose interest has been sold; and after the expiration of two weeks from the mailing of the notice, and if no other person has become entitled meanwhile for want of entry of the writ or otherwise, the master shall register the purchaser as owner, and shall, if required, issue to him a certificate of ownership in the prescribed form. R.S.O. 1914, c. 126, s. 65. Sale under execution of registered land.

Sale for Taxes.

66.—(1) Where land is sold for taxes, the purchaser may at any time after the sale lodge a caution against the transfer of the land; and upon the completion of the time allowed by law for redemption, and upon the production of the transfer of the land, with proof of the due execution thereof by the proper officer, the proper master of titles shall cause a notice to be sent, by registered mail, to the proper post-office address of the persons who appear upon the register to be interested in the land or served upon them or any of them personally or substitutionally by advertisement or otherwise as the master may direct; and after the expiration of three months from the mailing or service of the notice, shall, if no other person has become entitled by priority of registration, register the purchaser at the sale as owner of the land, with an absolute title; and shall, if required, issue to him a certificate of ownership in the prescribed form unless the registration is in the meantime stayed by order of the Court, and in that case the registration shall not be made nor shall the certificate be issued, except in accordance with the order and direction of the court. 1914, c. 24, s. 2, *part*; 1927, c. 39, s. 5 (1). Tax purchasers, registration of caution and subsequent entry as owner.

(2) If any person appearing upon the register to be interested in the land acquired such interest after the tax sale, the notice to be given to him shall require him, if he objects to the registration of the tax purchaser as owner, or if, having a Notice to persons interested.

charge only, he claims priority for such charge, to file his objection or claim verified by affidavit with the proper master, before the expiration of one month from the mailing or other service of the notice, and such master shall hear and determine such objection or claim upon notice to the parties interested and registration shall be made in accordance with the final determination of the matter by the master or on appeal from him. 1914, c. 24, s. 2, *part*; 1927, c. 39, s. 5 (2).

Forfeiture
of priority
of tax
purchaser.

(3) Where a tax purchaser fails to lodge a caution or to lodge his deed for registration prior to the registration of the title of a purchaser or chargee, claiming from or through the person who was the registered owner at the time of the tax sale, for valuable consideration and without actual notice of the tax sale, he shall lose his priority. (*Vide Rev. Stat. c. 155, s. 77.*)

Mechanic's
lien.

(4) Where it is made to appear to the master that the purchaser has so dealt with the land that a mechanic's lien has, or probably has, attached thereto subsequent to the sale and a claim of lien has been registered against the land the master may register the purchaser's title as subject to the claim of lien. 1914, c. 24, s. 2, *part*.

Cessation of Mechanics' Liens.

Cancellation
of liens reg-
istered under
Rev. Stat.
c. 173.

67. On its appearing to the satisfaction of the proper master of titles that a lien under *The Mechanics' Lien Act* has ceased to exist the master may make an entry accordingly, or an entry cancelling the claim; and the land affected shall thereby be released from the claim. R.S.O. 1914, c. 126, s. 67.

PART V.

OTHER DEALINGS WITH REGISTERED LAND.

Registered owner only may make registered disposition.

Effect of
unregistered
dispositions.
Imp. 38 & 39
V. c. 87,
s. 49.

68.—(1) No person other than the registered owner shall be entitled to transfer or charge registered freehold or leasehold land by a registered disposition.

Unregistered
estates, etc.

(2) Subject to the maintenance of the estate and right of such owner any person having a sufficient estate or interest in the land may create estates, rights, interests and equities in the same manner as he might do if the land were not registered.

How pro-
tected.

(3) Any person entitled to or interested in any unregistered estates, rights, interests or equities in registered land may protect the same from being impaired by any act of the registered owner by entering on the register such notices, cautions, inhibitions or other restrictions as are authorized by this Act.

(4) No person other than the registered owner thereof shall be entitled to transfer a registered charge by a registered disposition; but, subject to the maintenance of the right of such owner, unregistered interests in a registered charge may be created in the same manner and with the same incidents, so far as the difference of the subject matter admits, in and with which unregistered estates and interests may be created in registered land. R.S.O. 1914, c. 126, s. 68.

Who may transfer a registered charge.

Unregistered interests in a registered charge.

Right to Registration.

69.—(1) Every transfer or charge signed by a registered owner, or others claiming by transfer through or under him, purporting to transfer or charge freehold or leasehold land, or an interest therein, capable of being registered, or purporting to transfer a charge, shall, until cut out by a conflicting registration, confer upon the person intended to take under such transfer or charge a right to be registered as the owner of such land or charge, and where a person applies to be registered under this section the proper master of titles may either forthwith, or after requiring such notices to be given as he deems expedient, register such applicant as owner, subject to such incumbrances, if any, as the condition of the title requires, notwithstanding that the transfer or charge has been executed or bears date prior to the entry of such transferor or chargor as the owner of the land or charge.

Right of transferees, and charges, to registration.

(2) Any person claiming to be entitled to freehold or leasehold land, or to an interest therein, capable of being registered, or to a charge as devisee, heir, executor or administrator of a person who might have been registered under subsection 1, or any person claiming through or under such devisee, heir, executor or administrator may apply to be registered as owner of such land, interest or charge, and, if no conflicting registration has been made, may be so registered subject to the provisions of this section.

Application of devisees, &c., for registration.

(3) On registering the applicant the master shall, so far as practicable, enter on the register short particulars of every instrument or other title under which the right is conferred, as if such instrument had been duly presented for registration, or application for entry of transmission had been made in the proper order of time, and, as a preliminary step to the registration of the applicant, may enter any intermediate transferee, heir, executor or administrator as registered owner where that method is more convenient.

Mode of entry.

(4) No application by a person claiming through or under a deceased person shall be allowed unless all the persons entitled to the whole of the estate of the deceased in the land are to be entered as owners.

All persons entitled must apply.

(5) The master may in like manner enter as owner of freehold or leasehold land or of a charge any person who is entitled to such land or charge through the death of the owner,

Entry of persons taking by transmission from unregistered owner.

although the deceased had not been registered as owner, or any person who is entitled by virtue of the exercise of any power conferred by a statute, will, deed, or other instrument, whether the person so entitled claims directly from the deceased or directly under the power, or through any other person entitled by virtue of the death or power or through a succession of transfers or transmissions.

Registration under vesting order.

(6) Where under an order of court any freehold or leasehold land or a charge is vested in any person the master shall, on due proof of the order, make such entries in the register as are necessary to give effect thereto, but if any person whose estate is affected by the order is not shown by the order to be a party to the cause or matter in which the order was made the applicant shall furnish such evidence as is requisite to show that he is bound thereby.

Entry on register of municipal corporation as owner of streets laid out on plan.

(7) Where any street, road or lane laid out on a plan registered in a land titles office has become a public highway, and has thereby become vested in a municipal corporation, the corporation may apply to the proper master to be entered as the owner thereof.

Entry as owner of transferee from a municipal corporation of closed-up street.

(8) Where a highway or part of it has been closed by the action of a municipal council, and such highway or part of it has been transferred by the municipal corporation without the corporation having been entered as owner of it, the transferee may apply to be entered as owner of the highway or part of it transferred to him, and upon due proof of the facts the master may enter such transferee as owner. R.S.O. 1914, c. 126, s. 69.

NOTE:—As to registration of order of Mining Court, vesting land in co-owner who has paid acreage tax, see *Rev. Stat. c. 28, s. 19*.

Notice of Lease.

Lessee may apply for registration of notice of lease.

Imp. 38 & 39 V. c. 87, s. 50.

70.—(1) Any lessee or other person entitled to or interested in a lease or agreement for a lease of registered land where the term is for a life or lives, or is determinable on a life or lives, or where the period of the lease or agreement yet to run is three years or upwards, or where the occupation is not in accordance with such lease or agreement, may apply to the proper master of titles to register notice of such lease or agreement in the prescribed manner.

Manner of registering. Imp. 38 & 39 V. c. 87, s. 51.

(2) Where the lease is by the registered owner of the land the master may without notice to him enter on the register such notice thereof as he deems necessary.

Entering on register.

(3) Where the lease is not by the registered owner but his title appears to be subject thereto, or in the case of an agreement for a lease, the master, upon notice to such owner, may enter notice of the lease or agreement on the register.

(4) The applicant shall deliver to the master the original lease or agreement or a copy thereof; and if the application is granted the master shall make a note on the register identifying the lease or agreement or copy so deposited, and the lease or agreement or copy so deposited shall be deemed to be the instrument of which notice is given. How to be effected.

(5) If the registered owner concurs in a registration under subsection 2 or subsection 3 notice may be entered in such manner as may be agreed upon. Where registered owner concurs.

(6) When so registered every registered owner of the land and every person deriving title through him, excepting owners of incumbrances registered prior to the registration of such notice, shall be deemed to be affected with notice of the lease or agreement as being an incumbrance on the land in respect of which the notice is entered. Effect of such registrations.

(7) Where notice of such lease or agreement has been registered the master, on proof to his satisfaction of the determination of the lease or agreement, shall in the prescribed manner note the determination on the register. Where lease or agreement is determined.

(8) Where a notice of a lease or of an agreement for a lease has been registered under this section, a transferee or a chargee of the lease or agreement may apply to have a notice of his transfer or charge entered on the register. Transferee or chargee of lease or agreement may apply for registration of notice.

(9) Unless the transferee or chargee has actual notice of a prior transfer or charge a transfer or charge in respect of which a notice has been entered shall take priority of one of which notice has not been entered. R.S.O. 1914, c. 126, s. 70. Priority of notices.

Notice of Estates in Dower or by the Curtesy.

71. Any person entitled to an estate in dower or by the curtesy in any registered land may apply in the prescribed manner to the proper master of titles to register notice of such estate; and the master, if satisfied of the title of such person to such estate, shall register notice of the same accordingly in the prescribed form; and when so registered such estate shall be an incumbrance appearing on the register and shall be dealt with accordingly. R.S.O. 1914, c. 126, s. 71. Registration of notices of estates in dower or by the curtesy. Imp. 38 & 39 V. c. 87, s. 52.

Caution against Registered Dealings.

72.—(1) Any person interested in any way in any land or charge registered in the name of any other person may apply for registration of a caution with the proper master of titles to the effect that no dealings with such land or charge be had on the part of the registered owner or other named person who is shown to have an interest in the land until notice has been served upon the cautioner. R.S.O. 1914, c. 126, s. 72 (1); 1918, c. 28, s. 3. Caution against registered dealings, how to be lodged. Imp. 38 & 39 V. c. 87, s. 52.

Affidavit in support.

(2) The caution shall be supported by an affidavit made by the cautioner or his agent or solicitor in the prescribed form and containing the prescribed particulars.

No caution to be lodged in respect of an estate in dower, etc., noted on register.

(3) A person interested under a lease, or agreement for a lease, of which notice has been entered on the register, or a person entitled to an estate in dower, or by the curtesy, of which notice has been entered on the register, shall not be entitled to lodge a caution in respect of such lease or agreement or estate in dower or by the curtesy.

Renewal of certain cautions.

(4) Every caution founded upon an execution or upon an allegation that a transfer, charge or other dealing is fraudulent shall be renewed before the expiration of five years from the date of lodging the same, otherwise it shall cease to have effect. R.S.O. 1914, c. 126, s. 72 (2-4).

Renewal of caution founded on an option.

(5) Every caution founded upon any option shall be renewed before the expiration of five years from the date of lodging the same, otherwise it shall cease to have effect, and every such caution lodged five years before the 1st day of July, 1927, shall, unless renewed, cease to have effect on and after the 1st day of July, 1928. 1927, c. 39, s. 6.

Cautioner entitled to notice of proposed registered dealings.

Imp. 38 & 39
V. c. 87,
s. 54.

73.—(1) After any such caution has been registered the proper master of titles shall not, without the consent of the cautioner, register any dealing with the land or charge until after notice to the cautioner warning him that his caution will cease to have any effect after the expiration of the prescribed number of days next ensuing the date at which the notice is served. R.S.O. 1914, c. 126, s. 73 (1); 1918, c. 28, s. 4 (1).

Entering cessation of caution.

(2) After the expiration of such time the master shall enter a cessation of the caution unless good cause for its continuance is shown.

Effect of cessation.

(3) Upon the caution so ceasing the land or charge shall be dealt with in the same manner as if no caution had been lodged. R.S.O. 1914, c. 126, s. 73 (2, 3).

When notice of proposed registered dealings need not be given to cautioner.

(4) A notice to a cautioner shall not be required where the dealing proposed to be registered is under the authority of a judgment or order of court in a suit or proceeding to which the cautioner is a party, or where such dealing is under a power of sale contained in a charge or mortgage which is prior to the title under which the cautioner claims, and the cautioner has been served with a notice of the proposed exercise of the power of sale, and the caution is not in respect of the exercise of the power of sale, or where the dealing is of such a nature that it cannot detrimentally affect the interest of the cautioner as claimed in the affidavit filed with his caution, or where the transferee, chargee or other person desiring the registration of the dealing, is willing that the same should be registered, subject to the continuance of the caution,

and the master thinks fit so to register it. Where a caution is continued, such continuance shall prevent further registrations of dealings by the registered owner until after notice to the cautioner, unless as in this section provided. R.S.O. 1914, c. 126, s. 73 (4); 1918, c. 28, s. 4 (2).

(5) Where a caution only affects part of the land dealt with by the transfer, charge or other instrument, the master may, upon the application in writing of the person desiring registration, or his solicitor, register the dealing as to the land not affected by the caution, and may subsequently, after notice to the cautioner, or with his consent, register the dealing as to the remainder of the land dealt with by the instrument or any part thereof. The certificate of registration on the instrument shall show that the registration made in the first instance covers only part of the land embraced in it. 1918, c. 28, s. 4 (3).

(6) The master, upon receiving the consent of the cautioner to the registration of a dealing, may discharge the caution unless the consent provides for its continuance, or he may discharge the caution as to the land or charge to which the dealing applies, but he shall not do so where from the nature of the dealing he is of opinion that the continuance of the caution is contemplated. R.S.O. 1914, c. 126, s. 73 (5).

74.—(1) Where the registered owner of any freehold or leasehold land has executed a transfer or a charge thereof but claims that on account of special circumstances shown by affidavit the transferee or chargee should not be registered without notice to the registered owner, the proper master of titles may permit the registration of a caution by the registered owner.

(2) The registration of such caution shall stay the registration of the transfer until such notice has been served on the cautioner in accordance with the provisions of section 73. R.S.O. 1914, c. 126, s. 74.

75. If before the expiration of the prescribed period the cautioner or some person on his behalf appears before the proper master of titles, and within such period, or such additional period as the master may allow, gives sufficient security to indemnify every person against any damage that may be sustained by reason of any dealing with the land or charge being delayed, the master may delay registering any dealing with the land or charge for such further period as he deems just, or may instead of taking the security register such dealing subject to the caution on any condition which he thinks fit to impose, as to security or otherwise, or may make such other order as he deems just. R.S.O. 1914, c. 126, s. 75.

76. A second caution by the same cautioner, or by any other person in respect of the same matter, shall not be lodged, or if lodged shall not be entered or have any effect without

Where
caution
affects
part of
land
transferred
only.

How master
may act.

Registered
owner ob-
jecting to
the registra-
tion of his
transferee.

Registration
of caution
to stay
registration
of transfer
in the
meantime.

Registered
dealings de-
layed on se-
curity being
given.

Imp. 38 & 39
V. c. 87,
s. 55.

Entry of
second
caution.

the special permission of the proper master of titles, which may be given either upon terms or without terms as he may think proper. R.S.O. 1914, c. 126, s. 76.

Sale of Standing Timber.

Sale of
standing
timber.

Deposit of
agreement.

Address for
service.

Discharge by
consent.

Discharge by
master.

Notice.

77.—(1) Where timber standing upon registered land is sold under an agreement in writing the purchaser, instead of entering a caution, may deposit the agreement with the proper master of titles, and the master, upon proof of the due execution thereof by the owner, shall register the same as an incumbrance upon the land by entering a memorandum upon the register referring to the instrument and giving shortly the effect thereof. R.S.O. 1914, c. 126, s. 77.

(2) When registering the agreement the purchaser shall by memorandum endorsed thereon or annexed thereto give his address for service.

(3) The registration of any such agreement may be vacated upon the consent in writing of the purchaser verified by affidavit of execution.

(4) The registration of any such agreement may also be vacated if the purchaser fails, for the period of one month from the date of the mailing of the notice provided for in the following subsection, to satisfy the master that he still has rights under such agreement.

(5) Upon proof to his satisfaction that the rights of the purchaser are at an end the master shall send a notice by registered mail addressed to the purchaser at his address for service, warning him that his agreement will cease to have effect after the expiration of one month from the mailing of such notice unless good cause for its continuance is shown. 1927, c. 39, s. 7.

Inhibition against Registered Dealings.

Power of
court or mas-
ter to inhibit
registered
dealings.

Imp. 38 & 39
V. c. 87,
s. 57.

Imposition
of terms;
discharge of
order, etc.

78.—(1) The Court or the proper master of titles, upon the application of any person interested, made in the prescribed manner in relation to any registered land or charge, after directing such inquiries, if any, to be made and notices to be given, and after hearing such persons as the Court or master deems expedient, may issue an order or make an entry inhibiting for a time, or until the occurrence of an event to be named in such order or entry, or generally until further order or entry, any dealing with registered land or with a registered charge.

(2) The Court or the master may make an order or an entry and may impose any terms or conditions which may be deemed just, and may discharge the order or cancel the entry, with or without costs, and generally act in the premises in such manner as the justice of the case requires. R.S.O. 1914, c. 126, s. 78.

Power of Registered Owner to Impose Restrictions.

79.—(1) Where the registered owner of freehold or leasehold land or of a charge desires to place restrictions on transferring or charging the land or charge he may apply to the proper master of titles to make an entry on the register that no transfer shall be made or charge created unless the following things, or such of them as the owner may determine, are done; that is to say—

Power to place restrictions on register.
Imp. 38 & 39
V. c. 87,
s. 58.

- (a) Unless notice of any application for a transfer or for the creation of a charge is transmitted by registered post to such address as he may specify to the master;
- (b) Unless the consent of some person or persons, to be named by the owner, is given to the transfer or the creation of a charge; or
- (c) Unless some other matter or thing is done as may be required by the applicant and approved by the master.

(2) If the master is satisfied of the right of the applicant to give such directions he shall make a note of them on the register, and no transfer shall be made or charge created except in conformity therewith.

Master to enter restrictions in register.
Imp. 38 & 39
V. c. 87,
s. 59.

(3) The master shall not be required to enter any direction, except upon such terms as to payment of the fees and otherwise as may be prescribed, or to enter any restriction that he may deem unreasonable or calculated to cause inconvenience.

Discretion of the master.

(4) Any such direction may at any time be withdrawn or modified at the instance of all the persons for the time being appearing by the register to be interested in such direction, and shall also be subject to be set aside by the Court. R.S.O. 1914, c. 126, s. 79.

Directions may be withdrawn or set aside.

PART VI.

SUPPLEMENTAL PROVISIONS.

Notice of Registered Instruments.

80. No person other than the parties thereto shall be deemed to have any notice of the contents of any instruments other than those mentioned in the existing register of title of the parcel of land or which have been duly entered in the books of the office kept for the entry of instruments received or are in course of entry. R.S.O. 1914, c. 126, s. 80.

Effect of unregistered instruments.

Caution Against Entry of Land on Register.

Caution
against reg-
istration of
land.

Imp. 38 & 39
V. c. 87,
s. 60.

81.—(1) Any person having or claiming such an interest in any unregistered land as entitles him to object to any disposition thereof being made without his consent may apply for the registration of a caution with the proper master of titles to the effect that the cautioner is entitled to notice in the prescribed form, and to be served in the prescribed manner, of any application that may be made for the registration of such land. R.S.O. 1914, c. 126, s. 81 (1); 1918, c. 28, s. 5.

Renewal of,
every five
years.

(2) Every caution under this section shall be renewed before the expiration of five years from the date of lodging the same otherwise it shall cease to have effect.

Unpatented
land.

(3) No caution registered under this section in respect of any unpatented land shall be of any validity unless the description contained therein specifies the land in accordance with the description subsequently contained in the patent, or describes the same in such manner that the master may know that the description in the caution is intended to affect the land described in the patent. R.S.O. 1914, c. 126, s. 81 (2, 3).

Cautions as to Actions Pending.

Lis
pendens
not to be
registered.

82. A certificate of *lis pendens* affecting land shall not be registered, but any party to an action, or his solicitor, or any person claiming to be interested in the action, may lodge a caution subject to the same conditions as in other cases. R.S.O. 1914, c. 126, s. 82.

General Provisions as to Cautions.

Cautioner
entitled to
notice of
proposed reg-
istration of
land.

Imp. 38 & 39
V. c. 87,
s. 62.

83. After a caution has been registered in respect of any unregistered land, and while the same is in force, registration shall not be made of such land until notice has been served on the cautioner to appear and oppose such registration, and until the prescribed time has elapsed after the date of the service of such notice, or the cautioner has appeared whichever may first happen. R.S.O. 1914, c. 126, s. 83; 1918, c. 28, s. 6.

Caution to
be supported
by affidavit.
Imp. 38 & 39
V. c. 87,
s. 61.

84. Every caution shall be supported by an affidavit in the prescribed form stating the nature of the interest of the cautioner, the land to be affected by the caution and such other matters as may be prescribed. R.S.O. 1914, c. 126, s. 84.

Caution Wrongfully Lodged.

Compensa-
tion for im-
proper lodg-
ing of cau-
tion.
Imp. 38 & 39
V. c. 87,
s. 63.

85. Any person who lodges a caution without reasonable cause shall be liable to make to any person who may sustain damage by the lodging of such caution such compensation as may be just; and such compensation shall be deemed to be a debt due from the person who has lodged the caution to the person who has sustained damage. R.S.O. 1914, c. 126, s. 85.

86. A caution shall not prejudice the claim or title of any person, and shall have no effect except as in this Act provided. R.S.O. 1914, c. 126, s. 86.

Effect of caution.
Imp. 38 & 39
V. c. 87,
s. 64.

Costs.

87.—(1) Any applicant under this Act shall be liable *prima facie* to pay all costs, charges and expenses incurred by or in consequence of his application, except where parties whose rights are sufficiently secured without their appearance object, or where any costs, charges or expenses are incurred unnecessarily or improperly.

Payment of costs.
Imp. 38 & 39
V. c. 87,
s. 73.

(2) The proper master of titles may order costs, either as between party and party or as between solicitor and client, to be paid by or to any person, party to any proceeding under this Act, and may give directions as to the fund out of which any costs shall be paid, regard being had to the provisions of subsection 1.

Scale of costs.

(3) Any person aggrieved by an order of the master made under this section may appeal in the prescribed manner to the Court, which may annul or, with or without modification, confirm the order of the master.

Appeal from Master's order.

(4) If any person disobeys any order of the master made under this section the master may certify such disobedience to the Court, and thereupon, subject to such right of appeal, the order may be enforced in the like manner and by the like proceedings as if it were an order of the Court. R.S.O. 1914, c. 126, s. 87.

Enforcement of order.

Doubtful Questions of Law or Fact.

88.—(1) Where upon the examination of a title or upon an application with respect to registered land the proper master of titles entertains a doubt as to any matter of law he may state a case for the opinion of the Court and may name the parties to it; and where he entertains a doubt as to any matter of fact he may direct an issue to be tried for the purpose of determining such fact.

Master may state a case for opinion of court, or direct issue.

Imp. 38 & 39
V. c. 87,
s. 74.

(2) The practice and procedure on and incidental to a case stated or on an issue directed under this section and the right to appeal from the judgment or other determination thereof shall be the same as on a special case or on an issue directed in an action. R.S.O. 1914, c. 126, s. 88 (1, 2).

Practice.

(3) The powers conferred by this section shall not be exercised by a local master of titles except with the approval of the master of titles at Toronto. R.S.O. 1914, c. 126, s. 88 (3); 1925, c. 41, s. 6.

Exercise of powers.

Intervention
of Court in
case of inca-
pacitated
persons.

Imp. 38 & 39
V. c. 87,
s. 76.

89.—(1) Where any infant, idiot, lunatic, person of unsound mind, person absent from Canada, or person yet unborn is interested in the land in respect of the title to which a question arises as aforesaid, any person interested in the land may apply to the Court for a direction that the opinion of the Court to which the case is stated under this Act shall be conclusively binding on such infant, idiot, lunatic, person of unsound mind, person absent from Canada, or unborn person.

Idem.

(2) The Court shall hear the allegations of all parties appearing before it, and may disapprove altogether or may approve, either with or without modification, of the directions of the proper master of titles in respect to any case stated as to the title of land.

Power to
appoint
guardian, etc.

(3) The Court may also, if necessary, appoint a guardian or other person to appear on behalf of any infant, idiot, lunatic, person of unsound mind, person absent from Canada, or unborn person.

Power of
Court to
bind interests
of incapacitated
persons.

Imp. 38 & 39
V. c. 87,
s. 77.

(4) The Court, if satisfied that the interests of the person under disability, absent, or unborn will be sufficiently represented in any case, shall make an order declaring that all persons, with the exceptions, if any, named in the order, are to be conclusively bound; and thereupon all persons, with such exceptions, shall be conclusively bound by the decision of the Court. R.S.O. 1914, c. 126, s. 89.

Certificates of Ownership, Office Copies of Leases, and Certificates of Charge.

Loss of
land certifi-
cate, or certifi-
cate of
charge, or
office copy of
lease.

Imp. 38 & 39
V. c. 87,
s. 78.

90.—(1) If any certificate of ownership or office copy of a registered lease or certificate of charge is lost, mislaid, or destroyed the proper master of titles, upon being satisfied of that fact, may grant a new certificate of ownership or office copy of certificate of charge in place of the former one.

Renewal of
land certifi-
cate, or certifi-
cate of
charge, or
office copy of
lease.

Imp. 38 & 39
V. c. 87,
s. 79.

(2) The proper master of titles, upon the delivery up to him of a certificate of ownership or of an office copy of a registered lease or of a certificate of charge, may grant a new certificate of ownership or office copy of lease or certificate of charge in place of the one delivered up. R.S.O. 1914, c. 126, s. 90.

Land certifi-
cate, certifi-
cate of
charge, and
office copy of
lease to be
evidence.

Imp. 38 & 39
V. c. 87,
s. 80.

91. A certificate of ownership or certificate of charge shall be *prima facie* evidence of the matters therein contained, and the office copy of a registered lease shall be evidence of the contents of the registered lease. R.S.O. 1914, c. 126, s. 91.

Effect of de-
posit of land
certificate, or
of office copy
of lease.

92. Subject to any registered estates, charges, or rights, the deposit of the certificate of ownership in the case of freehold land, and of the office copy of the registered lease in the case of leasehold land for the purpose of creating a lien on the land to which such certificate or lease relates,

shall be deemed equivalent to a deposit of the title deeds of the land. R.S.O. 1914, c. 126, s. 92. Imp. 38 & 39
V. c. 87,
s. 81.

Incorporeal Hereditaments, Mining Rights and Easements.

93.—(1) The proper master of titles may register the owner of any incorporeal hereditament of freehold tenure, enjoyed in gross, also the owner of any mines or minerals where the ownership of the same has been severed from the ownership of the land, in the same manner and with the same incidents in and with which he is by this Act empowered to register the owner of land, or as near thereto as circumstances admit. Registry of
special here-
ditaments.
Imp. 38 & 39
V. c. 87,
s. 82.

(2) Where an easement in or over unregistered land is granted as appurtenant to registered land the master, after such examination as he deems necessary, may enter such easement in the register of the dominant land with a declaration that the title thereto is absolute, qualified or possessory, or otherwise as the case may require, and shall cause to be registered in the proper registry division a certificate of such entry. Registration
of easements
when domin-
ant land
registered.

(3) Where an easement in or over registered land is granted as appurtenant to unregistered land the master may issue a certificate setting out such easement and the land to which it is appurtenant, which may be registered in the registry division in which the land is situate, and he shall note on the register that such certificate has been issued. R.S.O. 1914, c. 126, s. 93. Certificate of
easement
when domin-
ant land
unregistered.

94.—(1) In the case of lands registered under this Act no title to any ores, mines or minerals shall be held to have passed or shall pass under section 3 of *The Mines Act of 1892*, or under section 3 of *The Act respecting Mines*, being chapter 36 of *The Revised Statutes of Ontario, 1897*, or under section 3 of *The Act to amend the Mines Act*, passed in the 63rd year of the reign of Her late Majesty Queen Victoria, until the registered owner shall have had himself entered as owner of such ores, mines or minerals, or until his transferee or chargee shall have procured the master to make the entries authorized by subsection 3. R.S.O. 1914, c. 126, s. 94 (1). Title to
minerals not
to pass until
owner entered
on land
register.
55 V. c. 9.
63 Vict. c. 13.

(2) In case of lands registered under this Act no title to any ores, mines or minerals shall be held to have passed or shall pass under Chapters 16, 17 and 18 of the Acts passed in the 8th year of the reign of His late Majesty King Edward VII., or sections 54 to 56 of *The Public Lands Act*, until the registered owner shall have furnished to the proper master of titles a certificate of the Minister of Mines, or of the Deputy Minister, that the same were at the time of the passing of the said Acts the property of the Crown and had not been staked out, recorded, leased or granted under *The Mining Act* or under any statutory regulation previously in force or that, Certificate of
Minister or
Deputy when
required.
Rev. Stat.
c. 35.
Rev. Stat.
c. 45.

Passing of
title to
minerals on
patent.

having been so staked out, recorded, leased or granted, all rights under such staking out, recording, leasing or granting have been abandoned, forfeited or cancelled, or otherwise have ceased, and until such owner shall have had himself registered as owner of the mines, ores or minerals or his transferee or chargee shall have procured the master to make the entries authorized by the next subsection. R.S.O. 1914, c. 126, s. 94 (2); 1925, c. 41, s. 2.

Transfers
or charges
heretofore
made.

(3) If any registered owner of lands shall have assumed to transfer or charge any mines, ores or minerals reserved by the Crown and coming within the said Acts the transferee or chargee may furnish to the said master the certificate of the Minister or Deputy Minister as above provided, and shall have the right to apply to be registered as such transferee or chargee, and the said master may make all proper entries in order to define the interests of the persons then appearing to be entitled to the mines, ores or minerals or any interest therein.

Claims
against
Assurance
Fund.

(4) No claim shall be sustained against the Assurance Fund in respect of any right arising under any of the said Acts by reason of any dealing with any ores, mines or minerals which were prior to the passing of such Act subject to the reservation thereof to the Crown. R.S.O. 1914, c. 126, s. 94 (3, 4).

General Provisions.

Trusts not to
be entered.
Imp. 38 & 39
V. c. 87,
s. 83, part.

95.—(1) There shall not be entered on the register or be receivable any notice of any trust, express, implied, or constructive.

Description
of owner as
a trustee.

(2) Describing the owner of any freehold or leasehold land, or of any charge as a trustee, whether the beneficiary or object of the trust is or is not mentioned, shall not be deemed a notice of a trust within the meaning of this section, nor shall such description impose upon any person dealing with such owner the duty of making any enquiry as to the power of the owner in respect of the land or charge or the money secured by the charge, or otherwise; but, subject to the registration of any caution or inhibition, such owner may deal with the land or charge as if such description had not been inserted.

Owners
described as
trustees
to be
joint tenants.

(3) Where two or more owners are described as trustees the property shall be held to be vested in them as joint tenants unless the contrary is expressly stated.

Saving as
charge by a
company as
security.

(4) Nothing in this section shall prevent the registration of a charge given by an incorporated company for the purpose of securing bonds or debentures of the company, but the registration of any such charge shall not be deemed a guarantee that the proceedings necessary to render the same valid have been duly taken. R.S.O. 1914, c. 126, s. 95.

96.—(1) No person shall be registered as owner of any undivided share in any freehold or leasehold land or of any charge apart from the other share or shares.

Undivided shares.
Imp. 38 & 39
V. c. 87,
s. 83, part.

(2) The share of each owner may be stated, and where the extent of his interest appears on the register, or by the statement of his co-owners, he may transfer or charge his share, or he may without such statement transfer his share to his co-owners. R.S.O. 1914, c. 126, s. 96.

Rights of owner in such case.

97.—(1) Where the number of persons who may be registered as the owners of the same freehold or leasehold land or charge is limited by a rule, a number of persons exceeding the number prescribed shall not be registered as owners of such land or charge; and if the number of persons showing title exceeds the prescribed number, such of them not exceeding the prescribed number, as may be agreed upon, or as the proper master of titles in case of difference decides, shall be registered as owners.

Restricting number of persons who may be registered as owners.

(2) Upon the registration of two or more persons as owners of the same land or of the same charge an entry may, with their consent, be made on the register to the effect that when the number of such owners is reduced below a certain specified number no registered disposition of such land or charge shall be made except under the order of the court.

Special entry, in certain cases.

(3) In such a case the words "No survivorship" in the entry shall be construed to mean that if any one of the owners should die no registered disposition of the land or charge shall be made except under order of the Court. R.S.O. 1914, c. 126, s. 97.

"No survivorship."

98.—(1) Registered land shall be described in such manner as the proper master of titles deems best calculated to secure accuracy, but such description shall not be conclusive as to the boundaries or extent of the land.

Description of land.

(2) No alteration shall be made in the registered description of land, except under the order of the Court, or under section 121, or by way of explanation, or under Rules of Court; but this provision shall not extend to registered dealings with registered land in separate parcels, although such land was originally registered as one parcel. R.S.O. 1914, c. 126, s. 98.

No alteration to be made in registered description.

99.—(1) There may be registered as annexed to any land which is being or has been registered, subject to general rules and in the prescribed manner, a condition or covenant that such land or any specified portion thereof is not to be built on, or is to be or not to be used in a particular manner, or any other condition or covenant running with or capable of being legally annexed to land.

Annexation of conditions or covenants to registered land.

Imp. 38 & 39
V. c. 87,
s. 84.

Who
affected
with notice.

(2) The first owner and every transferee, and every other person deriving title from him, shall be deemed to be affected with notice of such condition or covenant; but any such condition or covenant may be modified or discharged by order of the Court, on proof to the satisfaction of the Court that the modification will be beneficial to the persons principally interested in the enforcement of the condition or covenant.

Modification
or discharge
of covenants.

Covenants
or conditions
running with
land.

(3) The entry on the register of a condition or covenant as running with or annexed to land shall not make it run with the land, if such covenant or condition on account of its nature, or of the manner in which it is expressed, would not otherwise be annexed to or run with the land.

Subsequent
transfers.

(4) Where a condition or covenant has been entered on the register as annexed to or running with land, and a similar condition is contained in a subsequent transfer or a similar covenant is in express terms entered into with the owner of the land by a subsequent transferee, or *vice versa*, it shall not be necessary to repeat such condition or covenant on the register or to refer thereto, but the proper master of titles may, upon a special application, enter such condition or covenant either in addition to or in lieu of the condition or covenant first mentioned. R.S.O. 1914, c. 126, s. 99.

Registered
land to be
within Rev.
Stat. c. 150.

100. All the provisions of *The Trustee Act* which are not inconsistent with the provisions of this Act shall apply to land and charges registered under this Act, but this enactment shall not prejudice the applicability to such land and charges of any provisions of that Act relating to land or choses in action. R.S.O. 1914, c. 126, s. 100.

Imp. 38 & 39
V. c. 87,
s. 85.

Indemnity
of master
of titles.

101. Neither the master of titles, nor any local master of titles, nor any person acting under their authority or under any order of Court or general rule, shall be liable to any action, suit, or proceeding for or in respect of any act or matter *bona fide* done or omitted to be done in the exercise or supposed exercise of the powers conferred by this Act, or of any such order or general rule. R.S.O. 1914, c. 126, s. 101.

Imp. 38 & 39
V. c. 87,
s. 86.

Instruments need not be Sealed.

Charges and
transfers
may be
made without
seal.

102. Notwithstanding the provisions of any statute, or any rule of law, any charge or transfer of land registered under this Act may be duly made by an instrument not under seal, and if so made the instrument and every agreement, stipulation and condition therein shall have the same effect for all purposes as if it were made under seal. R.S.O. 1914, c. 126, s. 102.

Married Women.

Execution of
instruments
by married
women.

103. A married woman shall for the purposes of this Act be deemed a *femme sole* and may execute without seal any bar of dower or other instrument required under this Act, and

her husband need not be a party thereto, and she may bar her dower in any land sold by her husband or mortgaged by him to a purchaser or mortgagee for value although she is under the age of twenty-one years. R.S.O. 1914, c. 126, s. 103; 1927, c. 39, s. 8.

Persons under Disability.

104.—(1) In case any person who, if not under disability, might have made any application, given any consent, or done any act, or been party to any proceeding under this Act is an infant, an idiot or a lunatic the guardian of the infant, or committee of the estate of the idiot or lunatic, may make such application, give such consent, do such act and be party to such proceedings as such person, if free from disability might have made, given, done or been party to, and shall otherwise represent such person for the purposes of this Act.

Where any party is a minor or lunatic, guardian, etc., may act.

Imp. 38 & 39 V. c. 87, s. 88.

(2) If the infant has no guardian, or the idiot or lunatic has no committee of his estate, or if a person yet unborn is interested, the Official Guardian shall act with like power. or the proper master of titles may appoint a person with like power to act for the infant, idiot, lunatic or person yet unborn. R.S.O. 1914, c. 126, s. 104.

Official Guardian to act if no guardian, etc., or master may appoint some person.

Plans.

105.—(1) Where land is surveyed and subdivided for the purpose of being sold or conveyed in lots by reference to a plan which has not been already registered the person making the survey and subdivision shall register in the proper land titles office a plan of the land on a scale of not less than one inch to every four chains.

Plan of lots to be sold by plan to be registered.

(2) The plan shall show in black India ink the number of the township, city, town or village lots and range or concession as originally laid out, and all the boundary lines thereof within the limits of the land being subdivided, except where such plan is a subdivision of a lot or lots on a former plan, in which case it shall show in ink of another colour the numbers or other distinguishing marks of the lot or lots subdivided and by broken lines the boundary lines thereof.

Contents of plan.

(3) The number or other distinguishing mark, and the width both front and rear, shall be marked on each lot of the subdivision in black India ink, the scale shall also be marked on the plan and such information as will show the depth of the lots and the courses of all the boundaries of or the division lines between the same, and the governing line or lines to which such courses are referred shall also be indicated.

Each lot to be numbered and scale shown.

(4) The position of all the posts or monuments, if any, planted by the surveyor, or of other objects marking the boundaries of any of the lots or the corners thereof shall also be shown.

Posts or monuments.

Highways
and topo-
graphical
features.

(5) The plan shall also show all roads, streets, railway land, rivers, canals, streams, lakes, mill-ponds, marshes or other marked topographical features within the limits of the land so subdivided, together with such other information as is required to show distinctly the position of the land.

Designation
of lots.

(6) On every such plan the lots shall be so described and designated by numbers, letters or words, that there shall not be more than one lot on such plan described and designated by the same number, letter or word, notwithstanding that the lots are on different sides of the same street or on different streets or in different blocks, and where the designation is by numbers the lots shall be numbered consecutively.

To show
what land is
laid out.

(7) The plan shall also show distinctly what land is being laid out thereby, and shall by proper colouring distinguish such land from all other land shown on the plan, but not in fact laid out thereby, and the last mentioned land shall be shown uncoloured.

Mounting
and size
of plan.

(8) The plan shall be mounted on stiff pasteboard of good quality, and when it exceeds thirty inches in length by twenty-four inches in width shall be folded so as not to exceed that size, and no such plan shall be less than twenty-four inches in length or twelve inches in width.

To be signed
by owner
and certified
by land
surveyor.

(9) The plan before being registered shall be signed by the person or the chief officer of the corporation by whom or on whose behalf the same is deposited, and shall be certified by an Ontario land surveyor in the prescribed form.

Master may
require ex-
planation.

(10) The proper master of titles, before filing the plan, may require evidence to be given explaining any seeming discrepancy between the measurements on the plan and the description of the land in the register, or may require evidence respecting any other matter of which he requires explanation.

Delivery of
plans to
municipal
treasurers.

(11) Every person who deposits a plan of any survey or subdivision of land made by such person for the purpose of selling or conveying the same in lots, or of any alteration of a previous survey or subdivision, shall at the same time deposit a duplicate of such plan, and the master shall endorse thereon a certificate showing the number of such plan and the date when the duplicate original thereof was filed with him, and the same shall be delivered by the master to the treasurer or assessment commissioner of the local municipality in which the land is situate upon request and without fee.

Deposit of
duplicate
plan.

(12) The master shall not file or register any plan unless and until a duplicate thereof is deposited in accordance with the provisions of subsection 11.

Field notes of
surveyor.

(13) In the case of surveys hereafter made the plan shall be accompanied by a copy certified by the surveyor by whom the survey was made to be a true copy of the field notes of the survey, if any. R.S.O. 1914, c. 126, s. 105.

106.—(1) Where lands in an unsurveyed township in a district have been or shall be granted by the Crown and the same are subsequently surveyed and laid out into lots and concessions in whole or in part, such survey shall be made in accordance with the provisions of *The Surveys Act* as made applicable by the terms of the patent or order in council granting such township and the plan of such survey shall be registered in the proper office of land titles.

Survey of township subsequent to grant from Crown.

Rev. Stat. c. 202.

(2) The said plan shall be prepared as nearly as may be in accordance with section 105, but the scale need not be greater and shall not be less than one inch to forty chains. 1915, c. 20, s. 14 (1).

Requirements as to plans.

107.—(1) In cases not provided for by section 105 the proper master of titles may require a person applying for registration to deposit a plan of the land with the several measurements marked thereon, certified by an Ontario land surveyor, and as many counterparts as may be required, upon one of the following scales.

Master may require plan to be registered in certain cases.

(a) If the land, or the part thereof proposed to be transferred or dealt with, is of less area than one acre the plan shall be on a scale not less than one inch to two chains;

Rules 50 and 51 made under Imp. Act 38 & 39 V. c. 87.

(b) If the land, or the part thereof proposed to be transferred or dealt with, is of greater area than one acre, but not exceeding five acres, the plan shall be on a scale not less than one inch to five chains;

(c) If the land, or the part thereof proposed to be transferred or dealt with, is of greater area than five acres, but not exceeding eighty acres, the plan shall be on a scale not less than one inch to ten chains;

(d) If the land, or the part thereof proposed to be transferred or dealt with, is of greater area than eighty acres the plan shall be on a scale of one inch to twenty chains.

(2) The owner shall sign the plan and verify its accuracy before some person authorized under section 134.

Owner to verify plan.

(3) If the owner neglects or refuses to comply with such requirements the master may refuse to proceed with the registration of the transfer or dealing.

Effect of refusal.

(4) Subsequent subdivisions of the same land may be delineated upon a duplicate of the plan so deposited if the scale upon which it is drawn permits of that being done in conformity to the provisions of subsection 1; and the accuracy of the delineation of each such subdivision shall be certified and verified in the manner prescribed by subsections 1 and 2.

Subsequent subdivisions.

Where plan includes parts of different subdivisions.

(5) Where the land of which a plan is directed to be deposited includes parts of different subdivisions the plan shall represent the whole of each subdivision and shall indicate the location of the land to be transferred; but this shall not be necessary in the case of lots in a city, town or village, the plan of which has been registered, unless the master otherwise directs. R.S.O. 1914, c. 126, s. 106.

Plan of street, road, lane, or common.

108. In case a plan of a subdivision lays out any portion of the land as a street, road, lane or common it shall not be registered unless, on the application of the owner of the land subdivided, with the consent in writing of all persons who are registered as mortgagees or chargees thereof. R.S.O. 1914, c. 126, s. 107.

Instruments must conform to plan.

109. All instruments affecting the land or any part thereof lodged with the proper master of titles after a plan is registered shall conform and refer thereto, or registration shall not be had thereunder unless the master under special circumstances deems it proper to accept the same. R.S.O. 1914, c. 126, s. 108.

Approval of plans before registration.

110.—(1) No plan upon which a street, road or highway is laid out shall be registered unless it has been approved by the proper municipal council or councils, and no plan of land abutting upon a highway of a less width than sixty-six feet or upon which there is laid out a highway of a less width than sixty-six feet shall be registered unless it has been approved by the proper municipal council or councils and by The Ontario Railway and Municipal Board.

Where Rev. Stat. c. 236 applies.

(2) No plan of survey and subdivision to which the provisions of *The Planning and Development Act* apply shall be registered unless approved as required by that Act.

In unorganized territory.

(3) No plan of land in territory without municipal organization shall be registered unless approved by the Ontario Railway and Municipal Board. 1917, c. 31, s. 1.

Approval of municipal council on terms.

(4) The approval of the proper municipal council, referred to in this section, may be upon terms and conditions embodied in an agreement signed by the owner of the lands laid out by such plan, and by the municipality and may be registered upon the lands so laid out. R.S.O. 1914, c. 126, s. 109 (2).

Plan not binding unless sale made according to it.

Amendment of plans by order of Court or a judge.

111.—(1) No plan, although registered in an office of land titles, shall be binding on the person registering the same, or upon any other person, unless a sale has been made according to such plan; and in all cases amendments or alterations thereof may be ordered to be made at the instance of the person registering the same or his assigns, or of the

owner for the time being of any of the land covered by the plan;

- (a) By the Supreme Court or by a judge thereof,
- (b) Where the land is not in the County of York or City of Toronto by a judge of the county or district court of the county or district in which the land lies, or
- (c) Where the land is in the County of York or City of Toronto by the Master of Titles,

if on application for the purpose duly made, and upon hearing all persons concerned, it is thought just so to order, and upon such terms and conditions as to costs and otherwise as may be deemed just and expedient.

(2) Any such application may be made either by the person filing the plan or by the owner for the time being of any of the land covered thereby. Application as to plan by person filing or by owner.

(3) An appeal shall lie from any such decision to a Divisional Court. Appeal.

(4) No part of a road, street, lane or alley upon which any such lot abuts, or which connects any such lot with, or affords access therefrom to the nearest public highway, shall be altered or closed up without the consent of the owner of such lot, but nothing herein shall interfere with the powers of municipal corporations with reference to highways. R.S.O. 1914, c. 126, s. 110. No alteration or closing of street, etc., without consent of owner.

112. Where all the lots on any plan of subdivision registered in a registry office are registered under this Act the proper master of titles may require the registrar to deliver the plan to him to be registered in his office; and the registrar shall thereupon deliver the same taking a receipt therefor. R.S.O. 1914, c. 126, s. 111. Transfer of plans from registry offices.

Notices.

113.—(1) Every person whose name is entered on the register as owner of freehold or leasehold land or of a charge, or as cautioner, or as entitled to receive any notice, or in any other character, shall furnish a place of address in Ontario, and may from time to time substitute some other place of address in Ontario for that originally furnished. Address of persons on register. Imp. 38 & 39 V. c. 87, s. 89.

(2) If any such person fails to furnish a place of address for service a notice sent by post addressed to such person at the place named in the registered instrument under which he claims as his place of residence shall be sufficient unless the proper master of titles otherwise directs. In case address not furnished.

Service of notices.

Imp. 38 & 39
V. c. 87,
s. 90.

(3) Every notice by this Act required to be given to any person shall be served personally, or sent by registered post directed to such person at the address or last address, as the case may be, furnished, and unless returned shall be deemed to have been received by the person addressed within such period, not less than seven days exclusive of the day of posting, as may be prescribed.

Return of notices by post-office.
Imp. 38 & 39
V. c. 87,
s. 91.

(4) The envelope containing any notice under this Act shall have printed thereon the words "Office of Land Titles," and a request in the prescribed manner for the return thereof to the office of land titles in case the person to whom the notice is addressed cannot be found.

Master to act on return of notice.

(5) On the return of any envelope containing any notice the master shall act in the matter requiring the notice to be given in the manner prescribed. R.S.O. 1914, c. 126, s. 112.

Purchasers for value not affected by omission to send notices.
Imp. 38 & 39
V. c. 87,
s. 92.

114. A purchaser for valuable consideration when registered shall not be affected by the omission to send any notice by this Act directed to be given, or by the non-receipt thereof. R.S.O. 1914, c. 126, s. 113.

Specific Performance.

Power of court in action for specific performance.

Imp. 38 & 39
V. c. 87,
s. 93.

115.—(1) Where an action is instituted for the specific performance of a contract relating to registered land, or a registered charge, the court having cognizance of the action may by such mode as it deems expedient cause all or any persons who have registered estates or rights in the land or charge, or have entered notices, cautions or inhibitions against the same to appear in the action and show cause why the contract should not be specifically performed; and the court may direct that any order made by the court in the action shall be binding on such persons or any of them.

Costs in action for specific performance.

Imp. 38 & 39
V. c. 87,
s. 94.

(2) All costs awarded to any person so appearing may, if the Court so orders, be taxed as between solicitor and client. R.S.O. 1914, c. 126, s. 114.

Rectification of the Register.

Establishment of adverse title to land.

Imp. 38 & 39
V. c. 87,
s. 95.

116. Subject to any estates or rights acquired by registration in pursuance of this Act, where any court of competent jurisdiction has decided that any person is entitled to any estate, right, or interest in or to any registered land or charge, and as a consequence of such decision the Court is of opinion that a rectification of the register is required, the Court may make an order directing the register to be rectified in such manner as may be deemed just. R.S.O. 1914, c. 126, s. 115.

Register to be rectified under order of court.
Imp. 38 & 39
V. c. 87,
s. 90.

117. Subject to any estates or rights acquired by registration in pursuance of this Act, if any person is aggrieved by any entry made, or by the omission of any entry from the

register, or if default is made or unnecessary delay takes place in making any entry in the register, any person aggrieved by such entry, omission, default or delay may apply to the Court in the prescribed manner for an order that the register may be rectified; and the Court may either refuse the application with or without costs to be paid by the applicant, or may, if satisfied of the justice of the case, make an order for the rectification of the register. R.S.O. 1914, c. 126, s. 116.

118. The Court, on any application, or in any other matter or proceeding coming before it under this Act, shall have the like authority in respect of costs, as it has in any ordinary proceeding within its jurisdiction. 1918, c. 28, s. 7. Power of court as to costs in proceeding to rectifying register.

119. The master of titles and the local masters of titles shall obey the order of any competent court in relation to any registered land on being served with the order or an office copy thereof. R.S.O. 1914, c. 126, s. 117. Master to obey orders of court. Imp. 38 & 39 V. c. 87, s. 97.

120.—(1) Upon the conviction under this Act, or under the Criminal Law of Canada, of any person for an offence whereby such person fraudulently procured an entry on the register by reason of which any person other than the rightful owner has become the registered owner of land, or by reason of which land under this Act has been wrongfully incumbered, the proper master of titles, on the application of the rightful owner, may cancel such wrongful entry and may enter the rightful owner as the registered owner of the land. Cancellation of fraudulent entries.

(2) If while the wrongful entry was subsisting on the register any innocent person has been registered as the owner of any charge upon or any estate, right or interest in the land the master, instead of cancelling the wrongful entry, may make an entry on the register stating the fact of the conviction and revesting the land in the rightful owner subject to such charge, estate, right or interest, and the land shall thereupon be vested in the person named in such last mentioned entry in accordance with the terms thereof. Where land has been transferred to innocent holder.

(3) This section shall apply to past as well as future cases. R.S.O. 1914, c. 126, s. 118. Application of section.

121.—(1) The proper master of titles may *sua sponte* and without affidavit enter a caution to prevent the dealing with any registered land when it appears to him that an error has been made in any entry by mis-description of such land or otherwise. Entry of caution by master in case of error.

(2) Subject to the rules the master, before the receipt of any conflicting instrument, or after notifying all persons interested, upon such evidence as appears to him sufficient, Correction of errors.

may correct errors and supply omissions in certificates of ownership or of charge, or in the register, or in any entry therein, and may call in any outstanding certificate for that purpose.

Restoration
of covenants
or conditions
and compen-
sation therefor.

(3) Where the master under this section restores to the register any covenant or condition he may do so with such modifications as he deems advisable so as to do the least possible injury to the persons affected by their omission or by their restoration, and upon notice to the Attorney-General for Ontario, at the same time or subsequently, may determine what damages, if any, shall be paid to any of the persons claiming to have been injuriously affected by the omission of the covenants or by their restoration. R.S.O. 1914, c. 126, s. 119.

Correction
of errors in
patents after
registration.
Rev. Stat.
c. 85.

122. Where land has been registered under this Act, and the Minister of Lands and Forests under *The Public Lands Act* directs an incorrect patent to be cancelled and a correct one to be issued in its stead, the proper master of titles, upon receipt of the subsequent patent, if no conflicting instrument has been received, shall amend the entry on the register to accord with the amending patent, or if a conflicting instrument has been received the master, after notifying all persons interested, may make such amendment. R.S.O. 1914, c. 126, s. 120.

Fraud.

Fraudulent
dispositions.

Imp. 38 & 39
V. c. 87,
s. 98.

123. Subject to the provisions of this Act, with respect to registered dispositions for valuable consideration, any disposition of land or of a charge on land which, if unregistered, would be fraudulent and void shall, notwithstanding registration, be fraudulent and void in like manner. R.S.O. 1914, c. 126, s. 121.

Certain
fraudulent
acts
declared
to be
offences.

Imp. 38 & 39
V. c. 87,
s. 100.

124.—(1) Any person who fraudulently procures, attempts to fraudulently procure, or is privy to the fraudulent procurement of any entry on the register, or of any erasure from the register or alteration of the register, shall be guilty of an offence under this Act, and upon conviction shall be liable to imprisonment for any term not exceeding two years, with or without hard labour, or to be fined such sum not exceeding \$1,000 as the court before which he is tried may adjudge.

Fraudulent
entries, etc.,
to be void.

(2) Any such entry, erasure, or alteration shall be void as between all parties or privies to the fraud. R.S.O. 1914, c. 126, s. 122.

R.S.O. c. 146

See The Criminal Code, ss. 175 and 420, as to the fraudulent registration of titles and making false affidavits.

ASSURANCE FUND.

125.—(1) An Assurance Fund shall be formed for the indemnity of persons who may be wrongfully deprived of land or some estate or interest therein by reason of the land being brought under the provisions of this Act, or by reason of some other person being registered as owner through fraud, or by reason of any misdescription, omission, or other error in a certificate of ownership of land or of a charge or in any entry on the register. R.S.O. 1914, c. 126, s. 123 (1); 1918, c. 28, s. 8 (1).

(2) In order to constitute such fund there shall be payable on the first registration under this Act of any land with an absolute or qualified title, in addition to all other fees, a sum equal to one-fourth of one per centum of the value of the land apart from the buildings or fixtures thereon, and one-tenth of one per centum of the value of the buildings and fixtures, and with a possessory title one-eighth of one per centum of the value of the land apart from the buildings or fixtures thereon, and one-twentieth of one per centum of the value of the buildings and fixtures and on the application to change a possessory title to an absolute title, one-eighth of one per centum of the value of the land apart from the value of the buildings and fixtures thereon, and one-twentieth of one per centum of the value of the buildings and fixtures, such value to be determined as of the date of the application. R.S.O. 1914, c. 126, s. 123 (2); 1925, c. 41, s. 7.

(3) Where the sum to be paid under the foregoing provision does not amount to \$1 the amount payable shall be \$1.

(4) Subject to the rules money payable under subsections 2 and 3 shall be paid into Court, with the privity of the Accountant of the Supreme Court, and shall be placed to the credit of an account to be intituled "Assurance Fund under the Land Titles Act," and, subject to the provision of subsection 5, shall be invested from time to time under the direction of the Court, and the interest or income derived therefrom shall be credited to the same account.

(5) All money paid under this section and in Court at the credit of the "Assurance Fund" and all money hereafter payable under this section shall, on his demand, be paid to the Treasurer of Ontario.

(6) Where the amount to be paid into the assurance fund is not more than \$10 no fee shall be payable for a direction to the bank to receive the same, and where such amount is payable in respect of a proceeding before a local master of titles the person desiring to pay the same may, at his own risk, transmit the amount by a money order, payable to "The Accountant of the Supreme Court at Toronto," in a registered letter addressed to the Accountant, together with a requisition in the prescribed form.

Valuation of the land by applicant.

(7) Subject to the rules the value of the land shall be ascertained by the oath of the applicant unless the proper master of titles dispenses therewith.

Master may obtain valuation.

(8) Subject to the rules, if the oath of the applicant is dispensed with, or if the master is not satisfied as to the correctness of the value stated by the oath of the applicant or of any other person, he may require the affidavit or certificate in that behalf of a sworn valuator; and such affidavit or certificate shall be conclusive.

Expenses of valuation.

(9) The expense of obtaining such valuation or certificate as allowed by the master shall be paid to the master by the registered owner before any dealing with the land is registered.

Indemnity against loss.

(10) The master may require any applicant for registration to indemnify the Assurance Fund against loss by a bond or covenant to His Majesty, either with or without sureties, or by such other security as he considers expedient.

Election to have fees for assurance funds made charge.

(11) It shall not be necessary that the assurance fees payable on first registration be then paid, but if not then paid the same shall be a charge on the land, and the amount with interest at five per centum compounded annually shall be stated in the entry of ownership to be a charge on the land, and no subsequent transfer or charge of the land or any transmission thereof, or of any part thereof, shall be registered, except as is in this section provided, until the amount of such charge shall have been paid into the Assurance Fund and proper proof of such payment furnished to the master, but this subsection shall not apply to cases coming within subsection 12. R.S.O. 1914, c. 126, s. 123 (3-11).

Proviso.

In provisional judicial districts.

(12) In the case of land situate in any of the provisional judicial districts where the letters patent or a certified copy of the order in council granting the land has been forwarded to the local master of titles for the purpose of registration, and the amount payable into the Assurance Fund is not paid, a note shall be made on the register and on the certificate that the land is liable to pay the assurance fee, and no subsequent transfer or charge of the land or transmission thereof shall be registered until such assurance fee, namely, a sum equal to one-fourth of one per centum of the value at the time of payment of the land apart from the buildings or fixtures and one-tenth of one per centum of the value of the buildings and fixtures erected on or affixed thereto before the first registration thereof, but not in any case less than \$1 in respect of any parcel, is paid. R.S.O. 1914, c. 126, s. 123 (12); 1914, c. 24, s. 3.

Case of land sold for taxes or by order of Court.

(13) Where land is sold for taxes, or upon the winding up of a company, or under execution, or under the order of a court, the master may register the new immediate ownership subject to such charge, and where part of a parcel is

so sold or is expropriated by any authority other than the Crown he may, upon proof of payment of the proportion of such Assurance Fund charge which he deems to be fairly attributable to the part so sold or expropriated, note in the register the fact of such payment in respect of the land so sold or expropriated and enter that part as free of the charge. R.S.O. 1914, c. 126, s. 123 (13); 1918, c. 28, s. 8 (2).

(14) Where land exceeding four hundred acres is entered in one parcel the master, upon a transfer of part of such parcel, many, in like manner, allow payment of a proportionate part of the assurance fees and enter the part transferred free of the charge. R.S.O. 1914, c. 126, s. 123 (14). Where land exceeds 400 acres, and part transferred.

(15) Where the value of any land is diminished by the removal therefrom of timber or minerals after such land has been located, sold or patented, except where the removal of the timber was under a Crown timber license, there shall also be paid as part of such assurance fee, one-fourth of one per centum of the value of the timber or minerals which have been removed. If the Attorney-General of Ontario is of the opinion that it is, in any case, in the public interest that the removal of any timber or minerals from any parcel of land should be prohibited until the assurance fees chargeable in respect thereof have been paid, he may, by notice in writing given to the registered owner, prohibit such removal, and may require the payment forthwith of the assurance fees chargeable in respect thereof, and thereafter no person shall remove any timber or minerals from the said land until such payment has been made and noted in the register. Upon such notice being given, the Attorney-General may recover from the registered owner, or from any person who has removed timber or minerals from the said land, the amount payable to the Assurance Fund in respect of the land, including the timber and minerals, and any person from whom the said amount, or any part thereof has been collected, may recover the same from the registered owner, unless there is an agreement with the registered owner to the contrary. Payment of assurance fee on value of timber, minerals, etc., taken from land.

(16) Where land is forfeited to or is expropriated by the Crown without the assurance fees chargeable in respect of such land having been paid, and the said land is subsequently granted by the Crown, the like assurance fees shall be payable thereon as if such land were then being patented for the first time, and subsection 12 of this section shall apply to the said land. 1918, c. 28, s. 8 (3). Payment of assurance fees where land taken by Crown is re-granted.

126.—(1) Any person wrongfully deprived of land, or of some estate or interest therein, by reason of the land being brought under this Act, or by reason of some other person being registered as owner through fraud or by reason of any misdescription, omission or other error in any certificate of ownership or charge, or in any entry on the register, shall be Remedy of person wrongfully deprived of land.

entitled to recover what is just, by way of compensation or damages, from the person on whose application the erroneous registration was made, or who acquired the title through the fraud or error.

Purchaser or mortgagee in good faith for value not liable.

(2) Subsection 1 shall not render liable any purchaser or mortgagee in good faith for valuable consideration by reason of the vendor or mortgagor having been registered as owner through fraud or error, or having derived title from or through a person registered as owner through fraud or error, whether the fraud or error consists in a wrong description of the property or otherwise.

Liability of assurance fund to compensate person wrongfully deprived.

(3) If the person so wrongfully deprived is unable by such means or otherwise to recover just compensation for his loss he shall be entitled to have the same paid out of the assurance fund, so far as the fund may be sufficient for that purpose having reference to other charges thereon, if the application is made within six years from the time of having been so deprived; or, in the case of a person under the disability of infancy, lunacy or unsoundness of mind, within six years from the date at which the disability ceased. R.S.O. 1914, c. 126, s. 124 (1-3).

How compensation to be determined.

(4) The liability of the fund for compensation and the amount of compensation shall, subject to appeal to a judge of the High Court Division and from him to the Appellate Division be determined by the Inspector, unless the Court or the Inspector on application directs some other way of ascertaining and determining the same. R.S.O. 1914, c. 126, s. 124 (4); 1925, c. 41, s. 8.

Costs of proceedings.

(5) The costs of the proceedings shall be in the discretion of the Court or of the Inspector.

How Assurance Fund to be recouped.

(6) Any sum paid out of the Assurance Fund may afterwards, for the benefit of the Fund, be recovered by action in the name of the Inspector from the person on whose application the erroneous registration was made or who acquired the title through the fraud or error or from his estate, and the Inspector's certificate of the payment out of the assurance fund shall be sufficient proof of the debt, but where the erroneous registration was made or the title acquired by mere error and without fraud, credit shall be given for any sum which such person may have paid into the assurance fund in respect of such land.

Rectification of register. Imp. Act, 60-61 V. c. 65, s. 7 (2).

(7) Where a registered disposition would, if unregistered, be absolutely void, or where the effect of the error would be to deprive a person of land of which he is in possession, or in receipt of the rents and profits, the Inspector may, in the first instance or after a reference to the Court, direct the rectification of the register, and in case of such rectification the person suffering by the rectification shall be entitled to the

compensation provided for by this section. R.S.O. 1914, c. 126, s. 124 (5-7).

127.—(1) Where any person makes a claim upon the assurance fund for compensation in respect of land patented as mining land or in respect of any land the chief value of which consists in the ores, mines or minerals therein, and it appears that such person is entitled to recover in respect of such land or of some interest therein, in determining the amount of compensation to be paid to such person the entire value of the land shall not be taken at a greater sum than eight hundred times the amount of the fees paid into the Assurance Fund in respect of the land, either in the first instance or under the provisions of section 128.

(2) Where such fees or some part thereof were paid into the Fund in respect of other land in addition to that for which a claim is so made without it appearing what amount was paid in respect of the particular parcel of land with reference to which the claim is made, the fees so paid, or the portion thereof as to which the fact may not appear to be otherwise, shall be deemed to have been paid *pro rata* in accordance with the acreage or other superficial contents of the whole parcel or of the various parcels in respect of which the fees were paid. R.S.O. 1914, c. 126, s. 125.

128.—(1) Where any person taking a transfer or charge of any land, coming within the provisions of the next preceding section, is of the opinion that a value to be determined under such section would not furnish a fair basis for compensation in case of loss he may, with the privity of the proper master of titles, pay into Court to the credit of the Assurance Fund such further sum as shall, with the amount previously paid into the assurance fund in respect of such land, make up one-fourth of one per centum of the value of the land at the time of making the payment, such value to be determined in the manner provided by section 125.

(2) No such additional payment shall be made, except by special leave of the master, unless the same is made within three months after the registration of the transfer or charge under which such person claims.

(3) No such payment shall affect the valuation of the land where the error which gives the right to compensation was committed before such payment was made.

(4) Where any additional payment is made under this section the master shall enter a memorandum of the particulars thereof in the margin of the entry of ownership, and shall in such entry show the total amount which has been paid into the fund in respect of such land. R.S.O. 1914, c. 126, s. 126.

No claim to compensation from Assurance Fund.

When person first registered could have conveyed good title to purchaser for value without notice.

Proviso.

New Zealand Act, No. 57, 1885, s. 53.

Where claimant had notice of registration proceedings.

Where claimant's negligence has caused loss.

Imp. Act, 60-61 V. c. 65, s. 7, subs. 3.

Interpretation of "claimant."

Duty of Treasurer of Ontario as to issuing Government Stock.

Conditions of issue.

129.—(1) No person shall be entitled to recover out of the Assurance Fund any compensation where

(a) the claim is founded upon a right existing at the time of the first registration of the land and the state of the title of the land at that time was such that the person who was first registered, or the person on whose nomination or authorization such registration was made by a duly registered conveyance could have conferred, as against the claimant, a valid title to a purchaser in good faith for valuable consideration without notice of any defect in the title; and no sufficient caution had been registered and was in force when the application for first registration was made or a patent was forwarded for registration and the proper master of titles had not actual notice of the defect prior to the first registration;

(b) the claimant, by direction of the master or in accordance with the practice of the office, had been served with a notice of the proceedings being had in the office, whether such proceedings were prior or subsequent to first registration, and failed to appear in accordance with the requirements of the notice; or if the master had adjudicated against him and he had failed to prosecute successfully an appeal against the master's decision;

(c) the claimant has caused or substantially contributed to the loss by his act, neglect or default and the omission to register a sufficient caution, notice, inhibition or restriction to protect a mortgage by deposit or other equitable interest or any unregistered right, or other equitable interest or any unregistered interest or equity created under section 68 or otherwise shall be deemed neglect within the meaning of this clause.

(2) In this section "Claimant" shall include the person actually making the claim and any person through whom he claims who he alleges was wrongfully deprived of land or of some estate or interest therein. R.S.O. 1914, c. 126, s. 127.

130.—(1) The Treasurer of Ontario, on receipt of the money paid to him under subsection 5 of section 125, shall issue to the Accountant of the Supreme Court in trust Ontario Government Stock to an amount equal to the sum so received, and such stock shall represent the assurance fund and be available for the same purposes.

(2) The stock shall be payable or redeemable at such time and shall be subject to such conditions as to inscription, reg-

istration and transfer as the Lieutenant-Governor in Council may deem advisable, and shall bear interest at the rate of two and one-half per centum per annum.

(3) The stock, together with the interest thereon, shall be charged upon and paid out of the Consolidated Revenue Fund. Charge of same on Consolidated Revenue Fund.

(4) All sums which become payable out of the assurance fund shall to the extent, but not exceeding the amount, of such fund be paid by the Treasurer of Ontario to the persons entitled thereto, out of the Consolidated Revenue Fund, on the production of an order of the Court or a judge authorizing or directing the payment to be made or of a certified copy thereof, and the sums so paid out shall be credited as payments on account of the stock in the hands of the Accountant, and the amount thereof shall be reduced accordingly. R.S.O. 1914, c. 126, s. 128. Payment to persons entitled.

WITHDRAWING LAND FROM THE REGISTRY.

131.—(1) Where, after land has been registered, special circumstances appear or subsequently arise which make it inexpedient that the land should continue under this Act the owner may apply in the prescribed manner to the proper master of titles for the withdrawal of the land from the Act. Application to withdraw registered land.

(2) If the owner proves before the master that all persons interested in the land proposed to be withdrawn consent to its withdrawal and satisfies the master that special circumstances exist which render the withdrawal of such land or a part thereof expedient the master may issue his certificate describing the land or such part thereof as the consent covers and as the master deems proper in such a manner that the certificate can be properly registered in the registry office for the registry division in which the land is situate, and upon the certificate being issued this Act shall cease to apply to the land described therein, and the land shall thereafter be subject to the ordinary laws relating to real estate and to the registry laws. Certificate by master.

(3) The certificate of a local master under this section shall not be valid unless approved and countersigned by the Inspector. Certificate to be countersigned by Inspector.

(4) Upon the production of the certificate to the registrar of deeds and payment of a fee of \$1 the same shall be duly registered. Registration of certificate.

(5) This section shall not apply to land registered under section 158. R.S.O. 1914, c. 126, s. 129. Application of section.

ADMINISTRATION AND MISCELLANEOUS.

Office of Land Registry.

Seal of office.

Imp. 38 & 39
V. c. 87,
s. 107.

132. There shall be a seal for every office of land titles. R.S.O. 1914, c. 126, s. 130.

Inspector to
frame and
promulgate
forms.
Imp. 38 & 39
V. c. 108.

133. The Inspector shall prepare and cause to be printed and promulgated such forms and directions as he may deem requisite or expedient for facilitating proceedings under this Act. R.S.O. 1914, c. 126, s. 131.

Administra-
tion of oaths.Rev. Stat.
c. 155.

134. The proper master of titles, or any officer of the office of land titles authorized by him in writing, or any person authorized for a like purpose under *The Registry Act*, may administer an oath for any of the purposes of this Act. R.S.O. 1914, c. 126, s. 132.

Depositions
taken before
special exam-
iners may be
used before
master of
titles.

135.—(1) The proper master of titles in any application made to him may act upon depositions or examinations taken before any of the special examiners appointed by the Court, who may administer the requisite oath to any person whose deposition or cross-examination the master has requested such examiner to take, and any such deposition or examination may be taken in shorthand, and any *viva voce* evidence given before the master may be taken down by a sworn shorthand writer if the examining party so desires.

Master to
give directions
to examiner.

(2) The master may name the witnesses to be examined or he may request the examiner to take the examination of all witnesses produced by any named person or persons or of any class of witnesses. R.S.O. 1914, c. 126, s. 133.

Power of
master to sum-
mon witnesses.
Imp. 38 & 39
V. c. 109.

136.—(1) The proper master of titles, by summons under the seal of his office, may require the attendance of all such persons as he may think fit in any application made to him, and may in the summons require any person to produce for inspection any document, deed, instrument or evidence of title to the production of which the applicant or any trustee for him is entitled.

To require
production of
plans, books,
etc.

(2) He may also, by a like summons, require any person having the custody of any map, plan, or book made or kept in pursuance of any Statute to produce such map, plan, or book for his inspection.

Examination
on oath.

(3) He may examine upon oath any person appearing before him, and he may allow to every person summoned by him reasonable charges for his attendance.

Charges for
attendance,
etc.

(4) Any charges allowed by the master under this section shall be deemed to be charges incurred in or about proceedings for registration of land and may be dealt with accordingly.

(5) If any person disobeys any order of the master made under this section the master may certify such disobedience to the Court, and thereupon such person may be punished by the Court in the same manner as if the order were the order of the Court.

Disobedience
of orders
of master.

(6) If any person, after the delivery to him of the summons or of a copy thereof, wilfully neglects or refuses to attend in pursuance of the summons or to produce such map, deed, instrument, evidence of title, plan, book or other document or to answer upon oath or otherwise such questions as may be lawfully put to him by the master he shall incur a penalty not exceeding \$50, recoverable under *The Summary Convictions Act*.

Non-attendance or refusal to answer questions. Imp. s. 38 & 39 V. c. 87, s. 110. Rev. Stat. c. 121.

(7) No person shall be required to attend in obedience to any summons, or to produce documents unless the fees and allowances for his attendance in accordance with the tariff of the Court are paid or tendered to him. R.S.O. 1914, c. 126, s. 134.

Tender of conduct money and fees.

137. The treasurer of the proper municipality, upon payment of the fee prescribed by section 139 of *The Assessment Act*, shall furnish to any person requiring the same in respect of land registered or with reference to which an application for registration is pending, a certificate of payment of taxes, charges, rates and assessments, in the prescribed form, or in a form as nearly corresponding thereto as the information given by his books of office will allow, and the certificate shall be binding upon the municipality. R.S.O. 1914, c. 126, s. 135.

Certificates as to taxes. Rev. Stat. c. 238.

138.—(1) In case of the illness or absence of the master of titles or of a local master, or for any other cause, the Lieutenant-Governor in Council may appoint a person to act as the deputy *pro tempore* of the master or local master, and such deputy, while so acting, shall have all the powers of the master or local master for whom he is appointed deputy.

Appointment of deputy of master.

(2) A person may be appointed under this section who shall have power to act from time to time.

To act from time to time.

(3) In case of the death of a master the deputy may act until his authority is revoked or a master is appointed and assumes the duties of his office. R.S.O. 1914, c. 126, s. 136.

Until authority revoked, or appointment to office made.

Right to Inspect Registry.

139. Subject to such regulations and exceptions, and to the payment of such sums as may be fixed by general rules, any person registered as owner of any land or charge and any person authorized by any such owner, or by an order of the Court, or by general rule, but no other person, may inspect and make copies of and extracts from any document in the custody of the proper master of titles relating to such land or charge. R.S.O. 1914, c. 126, s. 137.

Right to inspect documents. Imp. s. 38 & 39 V. c. 87, s. 104.

Rules.

Power to
make general
rules.

Rev. Stat.
c. 88.

Imp. 38 & 39
V. c. 87,
s. 111.

140.—(1) The Lieutenant-Governor in Council, or the Judges of the Supreme Court, under the authority of section 108 of *The Judicature Act*, which are to be read as applying to this Act, may make general rules in respect of,

- (a) the mode in which the register is to be made and kept;
- (b) the forms to be observed, the precautions to be taken, the instruments to be used, the notices to be given, and the evidence to be adduced in all proceedings or in connection with the registration, and in particular with respect to the reference to counsel of any title to land proposed to be registered with an absolute title;
- (c) the custody of any instruments coming into an office of land titles, with power to direct the destruction of any of them where they have become altogether superseded by entries on the register or have ceased to have any effect;
- (d) the duties which are to be performed by the master of titles, the local masters and other officers employed; and what acts of the master may be done by other officers;
- (e) the costs to be charged by solicitors in or incidental to or consequential on the registration of land, or any other matter required to be done for the purpose of carrying this Act into execution, with power to require such costs to be payable by commission, percentage, or otherwise, and to bear a certain proportion to the value of the land registered, or to be determined on such other principle as may be thought expedient;
- (f) the taxation of such costs and the persons by whom such costs are to be paid;
- (g) any matter by this Act directed or authorized to be prescribed;
- (h) any other matter or thing, whether similar or not to those above mentioned, in respect of which it may be deemed expedient to make rules for the purpose of carrying this Act into execution.

Rules re-
specting fees.
Imp. 38 & 39
V. c. 87,
s. 112.

(2) Rules may be made in like manner with respect to the amount of fees payable under this Act, and regard may be had,

- (a) in the case of the registration of land or of any transfer of land on the occasion of a sale,—to

the value of the land, as determined by the amount of purchase money; or to the value of it to be ascertained in such manner as may be prescribed;

- (b) in the case of registration of a charge or of any transfer of a charge,—to the amount of such charge. R.S.O. 1914, c. 126, s. 138.

141.—(1) Subject to the rules the fees payable in respect of such business as is analogous to the business under *The Registry Act* shall be the same as the fees payable to the registrar under that Act; and all other fees and costs, whether in respect of business done by the master of titles, local master of titles or by other officers, or by solicitors under this Act, shall be the same as nearly as may be as are payable in like proceedings in the Supreme Court. Fees. Rev. Stat. c. 155.

(2) The stamps for all fees payable on a certificate of ownership or a certificate of charge shall be affixed to the registered transfer or charge and not to the certificate, and all stamps payable in respect of registration shall be affixed to the instruments registered and not to the entry on the register. Stamps to be affixed to registered transfer or charge. R.S.O. 1914, c. 126, s. 139.

Appeals.

142. Except as provided by section 111 an appeal shall lie from any act, order, or decision of the master of titles or a local master of titles under this Act to a judge of the High Court Division and from him to a Divisional Court. Appeals from master. R.S.O. 1914, c. 126, s. 140.

143. Any person affected by an order made under this Act by a judge of the High Court Division may appeal from him to a Divisional Court within the prescribed time, and subject to the rules in like manner as in the case of other appeals to that Court. Appeal. Imp. 38 & 39 V. c. 87, s. 117. R.S.O. 1914, c. 126, s. 141.

Errors in Proceedings.

144. No application, order, affidavit, certificate, registration or other proceedings shall be invalid by reason of any mistake not affecting the substantial justice of the proceeding. Proceedings not void for want of form. R.S.O. 1914, c. 126, s. 142.

Oath of Office and Security by Officers.

145.—(1) The master of titles, before he enters upon the duties of his office, shall take and subscribe before a judge of the Supreme Court the oath of office in the form following:— Oath of office to be taken by master of titles.

I, A.B., do solemnly swear that I will faithfully, and to the best of my ability, perform the duties of the office of master of titles.

By local
master or
deputy.

(2) Every local master of titles and every deputy of the master or titles or of a local master, before he enters upon the duties of his office, shall take and subscribe an oath of office similar to that required to be taken by the master of titles.

Before whom
to be taken.

(3) In the case of a local master or of a deputy of a local master, the oath may be taken before a judge of the county or district court.

To be trans-
mitted to
Provincial
Secretary.

(4) The oaths of office shall be transmitted to the Provincial Secretary. R.S.O. 1914, c. 126, s. 143.

Bond of
master.

Rev. Stat.
c. 17.

146. Before the master of titles or a local master of titles enters upon the duties of his office he shall furnish security in accordance with the provisions of *The Public Officers' Act*. R.S.O. 1914, c. 126, s. 144.

Masters or Officers not to act as Agents for Investors.

Master, etc.,
not to act as
agent etc.,
of investors.

147.—(1) No master of titles, officer or clerk appointed under this Act, shall, directly or indirectly, act as the agent of any corporation, society, company, or person investing money and taking securities on land, or advise for any fee or reward, or otherwise, upon titles to land, or practise as a conveyancer or carry on or transact within the office any business or occupation other than his duties as such master, officer or clerk, or as holder of some other office under the Government of Ontario.

Application
of section.

(2) This section shall apply to every local master, but as applied to him, and the officers and clerks in his office, the word "land" shall mean land within the county, city, town or district for which he is local master. R.S.O. 1914, c. 126, s. 145.

EXTENSION OF ACT TO OTHER LOCALITIES AND EXPENSES.

Adoption of
Act by
municipality.

148.—(1) The municipal council of a county, or of a city or town separated from the county for municipal purposes, may pass a by-law declaring it expedient that the provisions of this Act be extended to the county, city or town.

County of
York, City of
Toronto and
other places
where Act in
force to supply
accommoda-
tion, etc.

(2) The municipal corporations of the County of York and City of Toronto and of any county, city or town which has passed or shall pass a by-law under subsection 1 shall provide proper fire-proof and other accommodation for an office of land titles; and, so far as the expenses of the office are not covered by the fees collected thereat, the corporation shall pay the same, including the salary of the master of titles of the locality, and all necessary and proper books, stationery, furniture, and lighting, cleaning and heating of the office, and attendance, and other matters and things incident to the proper conduct of the business of the office.

(3) Where this Act is extended to a county which includes a city or town separated from the county for municipal purposes, the city or town and county shall share the expenses to be borne by the locality under this Act, in such proportions as may be determined by arbitration under *The Municipal Act*, in case the councils interested do not agree in respect thereto.

Where county includes separated city or town.
Rev. Stat. c. 233.

(4) Where such a by-law has been passed and proper accommodation has been provided either in connection with the registry office or at some other convenient place to the satisfaction of the Inspector, and approved by the Lieutenant-Governor in Council, the Lieutenant-Governor may, by his proclamation, extend the operation of this Act to such county, city or town from a day to be named in the proclamation.

Proclamation extending Act to municipality.

(5) The fact of the conditions precedent to the issue of such proclamation having been performed shall be conclusively established by the issue of the proclamation. R.S.O. 1914, c. 126, s. 146.

Issue of proclamation to be evidence of performance of conditions precedent.

149.—(1) Where not less than twenty ratepayers of any county in which is situate a city or a town to which the provisions of this Act have been extended, who are owners of land situate in such county of the aggregate assessed value of \$400,000, petition the Lieutenant-Governor in Council for the issue of a proclamation extending the provisions of this Act to the county, and the Lieutenant-Governor in Council declares that it is expedient that the same should be so extended, the provisions of section 148 shall apply to such county as fully as they would have been applicable had a by-law been passed by the council of the county.

Extension of application of Act on petition of owners.

(2) In the cases provided for by subsection 1 the local master shall not be entitled to be paid a salary, unless the county council passes a resolution for the payment to him of a salary to be provided by the county, but such local master shall be entitled to retain for his own use the fees collected upon proceedings in his office.

Where local master to be entitled to a salary.

(3) All costs and expenses incurred in introducing the land titles system into the county, or incurred during one year thereafter in connection therewith, shall be paid by the petitioners.

Expenses of introduction of system, by whom to be paid.

(4) The owners of land which is assessed as land of non-residents shall be deemed ratepayers within the meaning of this section. R.S.O. 1914, c. 126, s. 147.

Non-resident owners to be deemed ratepayers.

150.—(1) Where this Act applies to a county, city or town entitled to receive money under section 101 of *The Registry Act* the registrar shall pay to the Treasurer of Ontario, to be applied, so far as necessary, in defraying the

Surplus fees under Rev. Stat. c. 155 to be applied in defraying expenses of land titles office.

salary of the master and other expenses of the office, the money payable either directly or indirectly to the county, city or town under that Act, and the Treasurer shall pay the balance to the county, city or town; and if the amount so paid to the Treasurer is not sufficient the residue, or if nothing is payable by the registrar, the whole of such salary and expenses shall be made good to the Province by the corporation of the county, city or town. R.S.O. 1914, c. 126, s. 148.

Surplus after payment of expenses of office to be paid to municipality.

(2) Where, however, the fees collected in any such land titles office exceed the expenses thereof, the Treasurer of Ontario shall pay over to the corporation or corporations, who would have been liable to make up a deficit, the amount of such excess. 1922, c. 54, s. 2.

LOCAL MASTERS OF TITLES.

Local masters of titles *ex-officio*.

Rev. Stat. c. 154.

151.—(1) Where at the time of the issue of a proclamation under section 148 there is a referee of titles, under *The Quieting Titles Act*, residing in the locality such referee shall *ex-officio* be the first local master of titles therefor, unless he practises as a barrister or solicitor, or is a judge of the county court, and he shall hold the office during the pleasure of the Lieutenant-Governor in Council.

Appointment of local masters.

(2) Subject to the provisions of subsection 1 the Lieutenant-Governor in Council may appoint a master of titles for any locality in which this Act is in force to be styled "The Local Master of Titles" for the county, city, town or district, as the case may be, who shall hold office during pleasure.

Qualifications.

(3) The person appointed may, in the discretion of the Lieutenant-Governor in Council, be a judge of a county or district court, a barrister or solicitor, whether practising or not, or a registrar.

Salary to be fixed by the Lieutenant-Governor in Council.

(4) The local master of titles shall be paid by salary or fees for his services in that capacity, such salary to be fixed by the Lieutenant-Governor in Council from time to time, with reference to the amount or probable amount of the business, on the report of the Inspector and shall be paid for his services in entering patents under sections 158 to 161 such sum as the Lieutenant-Governor in Council shall direct.

Order to be laid before Assembly. Rev. Stat. c. 88.

(5) The Order in Council shall be laid before the Assembly as provided in respect of Orders in Council under section 99 of *The Judicature Act*.

Commutation of fees of registrar or local master of titles.

(6) The Lieutenant-Governor in Council may commute the fees payable to a registrar of deeds or local master of titles in any county or district whether both offices are held by one officer or otherwise for a fixed sum each year, provided that such sum shall not exceed the income which such registrar

or local master would have derived from fees during such year, and the fees so commuted shall, on or before the 15th day of January in each year, be paid over to the Treasurer of Ontario in the case of a district for the use of the Province, and in the case of a county or city shall be subject to such division between such county or city and the Province as the Lieutenant-Governor in Council may direct.

(7) Where such registrar or local master holds office for part of a year he or his executors or administrators shall be entitled to the just proportion of such commuted fixed sum. Apportionment of commutation
R.S.O. 1914, c. 126, s. 149.

DUTIES AND POWERS OF LOCAL MASTERS.

152. Except where otherwise provided by this Act every local master of titles, in respect to land situate within the territory for which he is appointed, shall have all the authority of and perform all the duties which, in the County of York, are performed by the master of titles, subject to appeal in the same manner. Master's authority and duties.
R.S.O. 1914, c. 126, s. 150.

First Registration.

153.—(1) If, upon an application for first registration, the local master of titles finds that the applicant or his nominee is entitled to be registered he shall sign a memorandum to that effect at the foot of the application and draft entry and shall transmit the same to the Master of Titles at Toronto, with the deeds, evidence and other papers before him, and a draft of the entry of ownership proposed to be made. Local master to transmit title deeds, etc., to Inspector.
R.S.O. 1914, c. 126, s. 151 (1); 1918, c. 28, s. 9; 1925, c. 41, s. 9.

(2) If the Master of Titles at Toronto concurs in the opinion of the local master he shall approve thereof and shall return the papers transmitted to him, and the local master may thereupon register the applicant or his nominee as owner. Proceedings where Master of Titles at Toronto concurs in master's finding.

(3) If the Master of Titles at Toronto does not concur in the opinion of the local master he shall communicate his opinion to the local master and shall cause such action to be taken as he deems expedient, and if his objections are not removed by explanations or additional evidence the applicant or his nominee shall not be registered unless the Court on appeal, or on a case stated for its opinion, otherwise directs. Proceedings where Master of Titles does not concur.

(4) If there is a contest upon the decision of the Master of Titles at Toronto concurring in the local master's opinion registration shall be delayed for ten days to enable anyone who so desires to appeal. Stay of proceedings in case appeal desired.
R.S.O. 1914, c. 126, s. 151 (2-4); 1925, c. 41, s. 9.

Exception to application of s. 153.

154. Except as provided in subsection 4 of section 158, section 153 shall not apply to applications coming within sections 158, 159 and 161, or to applications for a possessory title, or for the registration of leasehold land where the freehold or other estate out of which the lease is derived is registered land, or where a declaration of the title of the lessor to grant the lease is not required. R.S.O. 1914, c. 126, s. 153; 1925, c. 41, s. 11.

Duty of registrar when required to forward documents of title to master or Inspector.

155.—(1) Where upon an application for first registration the master of titles or Inspector requires to examine any instruments registered in a registry office situate outside of the City of Toronto, the master or Inspector may request the registrar of the registry division in which the land lies to transmit any instrument appearing on the abstract or required in connection with the application which the master or Inspector desires to examine.

List of documents transmitted.

(2) The registrar upon payment of his proper fees shall comply with such request and shall transmit the documents by registered post or by express and shall send therewith a list of the documents transmitted and shall retain a copy of the list.

Documents to be returned.

(3) The master or Inspector shall return the documents as soon as practicable by registered post or by express, sending therewith to the registrar a list of all the documents so returned and keeping a copy of the list. 1915, c. 20, s. 14 (2).

Additional fees to registrar.

(4) The registrar, in addition to his usual fees for the production of a document, shall be entitled to an additional fee of ten cents for each document transmitted as compensation for his trouble in respect of such transmission, the preparation of the list and returning the documents to their proper files. R.S.O. 1914, c. 126, s. 154 (4).

Subsequent Registration.

Submission of case to Master of Titles at Toronto where local master in doubt.

156. If, on the application for the registration of an instrument after a first registration or for the registration of a transmission, the local master of titles is unable to come to a clear conclusion as to the action which he should take he shall delay making the required entry until he has stated the facts to the Master of Titles at Toronto for his opinion, and in submitting the case the local master shall state his own view and his reasons therefor. R.S.O. 1914, c. 126, s. 155; 1925, c. 41, s. 12.

INSPECTOR OF OFFICES OF LAND TITLES.

Appointment of Inspector.

157.—(1) The Lieutenant-Governor in Council may appoint an officer to be called the "Inspector of Land Titles Offices."

Duties of Inspector. Rev. Stat. c. 155.

(2) The Inspector shall, subject to the rules, have the like powers and duties as an Inspector under *The Registry*

Act, and such other duties as may be required of him by this *Act*, or by the rules, or as he may be required by the Lieutenant-Governor in Council to perform. 1925, c. 41, s. 13.

REGISTRATION OF NEWLY PATENTED LANDS IN DISTRICTS.

158.—(1) Where any land situate in a provisional judicial district is granted by letters patent or by order of the Lieutenant-Governor in Council the letters patent or a certified copy of the Order in Council shall be forwarded to the local master of titles of the district for the purpose of the grantee being entered as the first registered owner of the land, with any necessary qualifications.

Letters patent or Order-in-Council granting lands in certain districts, registration of.

(2) Subsection 1 shall not apply to land covered with the waters of Lake Huron adjacent to the Great Manitoulin Island, Cockburn Island or Fitzwilliam Island, in the District of Manitoulin, or adjacent to any island which, in whole or in part, lies between headland and headland around such three Islands.

Exemption of certain lands from application of subsection 1.

(3) It shall not be necessary to issue a notice in respect of a caution or adverse claim which has been lodged if, by the certificate of the Minister or Deputy Minister of Lands and Forests, it appears that the claim in respect of which such caution or adverse claim was lodged was considered by the Minister and disposed of before the issue of the patent; and if before the receipt of such a certificate any proceedings have been taken by a local master in respect of such caution or adverse claim he shall thereupon discontinue the same and disallow any objection or claim founded thereon and make such order as to costs as he deems just. R.S.O. 1914, c. 126, s. 159 (1-3).

Where notice of caution or adverse claim unnecessary.

(4) Where there is no contest as to the rights of the parties the local master may make the requisite entry and issue his certificate; but in case of a contest he shall transmit the papers to the Master of Titles at Toronto before registering the patentee as owner, and shall otherwise proceed as provided in section 153. R.S.O. 1914, c. 126, s. 159 (4); 1925, c. 41, s. 14.

Where no contest.

Where contest.

(5) Where the cautioner consents to the registration of the patentee the local master need not issue any notice on account of such caution.

Where cautioner consents.

(6) Letters patent from the Crown demising land or mining rights for a term of years, or for any greater estate, granted on or after the 31st day of December, 1887, shall be deemed to have been and to be within the provisions of this section. R.S.O. 1914, c. 126, s. 159 (5, 6).

Patents demising lands for term of years declared within this section.

159. Where land situate in a provisional judicial district has been patented by the Government of Canada the local master of titles shall have authority to register the patentee

Registration of Dominion patentees.

as owner of such land and may do so without submitting his finding upon the application to the Master of Titles at Toronto for his concurrence. R.S.O. 1914, c. 126, s. 160; 1925, c. 41, s. 15.

Notice by master to sheriff.

160.—(1) Upon an entry of ownership being made the local master of titles unless where the land is free grant or otherwise exempt from execution shall, in the prescribed form, notify the sheriff in whose bailiwick the land lies of the entry of the patentee as owner. R.S.O. 1914, c. 126, s. 161 (1); 1918, c. 28, s. 10.

How notice to be sent. After what time entries may be made in register.

(2) The notice shall be sent by registered post, and no entry of any dealing with the land shall be made in the register until fourteen days after the mailing of the notice, unless proof is previously made that the land is not liable to any execution.

Duty of sheriff on receipt of notice.

(3) The sheriff, upon receipt of the notice, shall forthwith transmit to the local master a copy of any execution in his hands affecting the land of the patentee, and if within the fourteen days no copy of an execution against the land of the patentee is received from the sheriff, the local master may assume that the land is not subject to any execution and may enter subsequent dealings with the land accordingly; and as against such entry no claim shall afterwards be sustained in respect of an execution against the patentee.

When local master may assume absence of any execution.

Entry where claim for taxes or copy of execution received.

(4) Where the local master receives from the sheriff a copy of an execution affecting the land an entry thereof shall be made against the land and all dealings with it shall be subject to such execution. R.S.O. 1914, c. 126, s. 161 (2-4).

Registration of transferee of patentee.

161.—(1) Where a patent for land is forwarded to a local master of titles, under section 158, and it is made to appear to him that the patentee since the date of the patent has transferred the land to some other person the transferee, or in case of a further transfer or transfers the ultimate transferee of the land, shall be entered as the first registered owner and shall be described as the transferee of the patentee or otherwise according to the fact.

Evidence of no execution.

(2) Before entering a transferee as first registered owner the local master shall require evidence to be produced showing that there is no execution affecting the land. R.S.O. 1914, c. 126, s. 162.

Fees payable to local master.

162. Where notices or other proceedings are necessary the local master shall be entitled to charge in addition to his disbursements the like fees as are payable to the master of titles in respect of similar proceedings. R.S.O. 1914, c. 126, s. 163.

5. *FERRIES.*

CHAPTER 159.

The Ferries Act.

1. Save as herein otherwise provided every grant or license of ferry shall be by the Lieutenant-Governor under the Great Seal and shall not extend for a longer term than seven years at any one time. R.S.O. 1914, c. 127, s. 2.

2. Save as herein otherwise provided no ferry shall be leased by the Crown, nor shall any lease thereof be renewed or any license of ferry be granted by the Crown, except by public competition, and after notice of the time and place at which tenders will be received for the lease or license for such ferry inserted at least once in each of four consecutive weeks in the *Ontario Gazette*, and in one or more of the newspapers published in the county or district in which the ferry is situate, and to persons giving such security as the Lieutenant-Governor in Council may prescribe. R.S.O. 1914, c. 127, s. 3.

3. Except in the case of municipalities as hereinafter provided, where the limits to which the exclusive privilege of any ferry extends are not already defined, such exclusive privilege shall not be granted for a greater distance than one mile and a half on each side of the place at which the ferry is usually kept, but nothing herein shall invalidate or infringe upon any existing grant or right of ferry. R.S.O. 1914, c. 127, s. 4.

4.—(1) Where a ferry is required over any stream or other water and the two shores are in different local municipalities not in the same county, or one shore is in a city or town separated from a county and the other is in another municipality in the same county, the Lieutenant-Governor may grant a license to either of such municipalities exclusively, or to both jointly, or to either of the counties or to both jointly, or to one of the counties jointly with a city or town, as he may consider most conducive to the public interest.

Extent of right conferred, etc.

(2) The license shall confer the right to establish a ferry from shore to shore on such stream or other water, with such limits and extent as may appear advisable to the Lieutenant-Governor in Council, and be expressed in the license.

Conditions of license as to motive power and other matters.

(3) The license shall be upon conditions as to the description of craft and motive power to be used and upon such further terms and conditions as the Lieutenant-Governor in Council may direct, and the terms and conditions shall be expressed in the license.

Municipalities sub-letting ferries.

(4) The council of the municipality may pass by-laws, not inconsistent with the terms of the license, for subletting the ferry to such person and upon such terms and conditions as the council may think fit.

Concurrence of municipalities where joint license.

(5) Where a license is granted to two municipalities jointly no by-law of the council of one municipality shall have any force until a by-law has been passed in similar terms, as nearly as may be, by the council of the other municipality.

Application of certain provisions excluded.

(6) The provision as to the duration of the license and the provisions of section 2 shall not apply to this section. R.S.O. 1914, c. 127, s. 5.

Municipal by-laws to establish, operate and license ferries.

5.—(1) The council of every township, town or village may pass by-laws for establishing and for maintaining and operating, and the council of every municipality, other than a county, may pass by-laws for licensing upon such terms and conditions as may be deemed proper and for regulating ferries between any two places in the municipality, or over any navigable waters in or upon the boundary of the municipality, and for establishing the rates of ferriage to be taken thereon; but no such by-law shall have effect until approved by the Lieutenant-Governor in Council.

Powers of county councils.

(2) The council of every county shall have the like power in regard to ferries between places which are both situate within the county but not within the same local municipality, provided that neither of such places is situate in a city or town separated from the county for municipal purposes.

Powers of Lieutenant-Governor in Council.

(3) Until the council exercises the powers conferred by this section the Lieutenant-Governor in Council may license and regulate such ferries and establish the rates of ferriage to be taken thereon. R.S.O. 1914, c. 127, s. 6.

Granting exclusive privileges.

6. The council of any municipality may grant exclusive privileges in any ferry vested in the corporation of the municipality. R.S.O. 1914, c. 127, s. 7.

Right of persons to keep boats at ferry for their own use.

7. Any person may keep at a ferry a boat, vessel or other craft for his own private use, or may use, for the accommodation of himself or of his employer, his own or his employer's boat, vessel or craft to cross the river or stream on which the

ferry is situate; but such privilege shall not be used for the purpose of taking, carrying or conveying any other person or property for hire, gain, reward or profit, or hope thereof, or directly or indirectly to enable any such other person to evade the payment of tolls at the ferry. R.S.O. 1914, c. 127, s. 8.

8. If any person unlawfully interferes with any right or license of ferry by taking, carrying or conveying at any ferry across the stream or other water on which the same is situate any person, cattle, carriage or wares in any boat, vessel or other craft for hire, gain, reward, profit or hope thereof, or unlawfully does any other act or thing to lessen the tolls and profits of any lessee or licensee of the Crown of any such ferry, the offender shall incur a penalty not exceeding \$20, to be recoverable under *The Summary Convictions Act*, and to be paid to the person aggrieved. R.S.O. 1914, c. 127, s. 9, *part*.

Penalty for
interfering
with licensed
ferryman's
rights.

Rev. Stat.
c. 121.

SECTION IX.

MERCANTILE LAW.

CHAPTER 160.

The Definition of Time Act.

Meaning of expressions of time.

1.—(1) Where an expression of time occurs in any Act or in any Rule of Court, by-law, deed or other instrument, heretofore or hereafter enacted or executed, or where any hour or other period of time is stated either orally or in writing, or any question as to a period of time arises, the time referred to or intended shall, unless it is otherwise specifically stated, be held to be “standard time.”

“Standard.”

Standard time east of 90 degrees west longitude.

(2) As regards that part of Ontario which lies east of the meridian of ninety degrees west longitude, standard time shall be reckoned as five hours behind Greenwich time.

West of that meridian.

(3) As regards that part of Ontario which lies west of that meridian, standard time shall be reckoned as six hours behind Greenwich time. R.S.O. 1914, c. 132, s. 2.

Order-in-Council may vary reckoning of standard time.

(4) The Lieutenant-Governor in Council may from time to time make regulations, and may from time to time amend, modify, suspend, repeal and re-enact such regulations, varying the reckoning of standard time as defined by subsections 2 and 3 hereof.

Rearrangement of railway time tables, etc.

(5) Such regulations may authorize the Ontario Railway and Municipal Board to fix the time tables of all railways subject to its control, and to make such other orders as may be necessary for the convenient carrying out of the provisions of this Act, in so far as may be necessary or convenient for carrying out the said regulations. 1918, c. 20, s. 25.

“Month,” meaning of.

2. The expression “month,” where it occurs or is stated as in the next preceding section mentioned, shall mean a calendar month unless it is otherwise specifically stated. R.S.O. 1914, c. 132, s. 3.

Numbering hours of day.

3. The hours of the day may in any locality be numbered in one series up to twenty-four. R.S.O. 1914, c. 132, s. 4.

CHAPTER 161.

The Mercantile Law Amendment Act.

INTERPRETATION.

1. In this Act,

- (a) "Bill of lading" shall include all receipts for goods ^{"Bill of lading."} accompanied by an undertaking to transfer the same from the place where they were received to some other place by any mode of carriage whatever, whether by land or water or partly by land and partly by water;
- (b) "Goods" shall include wares and merchandise; ^{"Goods."}
- (c) "Warehouse receipt" shall mean any receipt given ^{"Warehouse receipt."} by any person for any goods in his actual, visible and continued possession as bailee thereof in good faith and not as of his own property, and shall include
- (i) a receipt given by any person who is the owner or keeper of a harbour, cove, pond, wharf, yard, warehouse, shed, storehouse or other place for the storage of goods delivered to him as bailee, and actually in the place or in one or more of the places owned or kept by him whether such person is engaged in other business or not;
 - (ii) a receipt given by any person in charge of logs or timber in transit from timber limits or other land to the place of destination of such logs or timber; and
 - (iii) a specification of timber. R.S.O. 1914, c. 133, s. 2.

SURETIES' RIGHT TO ASSIGNMENT, ETC.

2.—(1) Every person who, being surety for the debt or duty of another or being liable with another for any debt or duty, pays the debt or performs the duty shall be entitled to have assigned to him or to a trustee for him, every judgment.

Right of
sureties
paying the
principal
debt, etc.,
to assign-
ment.

ment, specialty or other security which is held by the creditor in respect of such debt or duty, whether such judgment, specialty or other security be or be not deemed at law to have been satisfied by the payment of the debt or the performance of the duty.

And to remedies on such assignment.

(2) Such person shall be entitled to stand in the place of the creditor, and to use all the remedies, and, on proper indemnity to use the name of the creditor in any action or other proceeding in order to obtain from the principal debtor, or any co-surety, co-contractor or co-debtor indemnification for the advances made and loss sustained by such person, and the payment or performance made by him shall not be a defence to such action or other proceeding by him.

What only one co-surety, etc., may recover from another.

(3) No co-surety, co-contractor or co-debtor shall be entitled to recover from any other co-surety, co-contractor or co-debtor more than the just proportion to which, as between themselves, such last mentioned person is justly liable. R.S.O. 1914, c. 133, s. 3.

SECURITIES HELD ON JOINT ACCOUNT.

Effect of advance on joint account, etc.

Imp. Act 44-45 V. c. 41, s. 61.

3.—(1) Where, in a mortgage or an obligation for payment of money, or a transfer of mortgage or of such obligation, made after the 1st day of July, 1886, the sum, or any part of the sum advanced or owing is expressed to be advanced by or owing to more persons than one out of money, or as money, belonging to them on a joint account, or where a mortgage, or such an obligation, or such a transfer is made to more persons than one, jointly and not in shares, the mortgage money, or other money or money's worth, for the time being due to such persons on the mortgage or obligation, shall be deemed to be and remain money or money's worth belonging to those persons on a joint account, as between them and the mortgagor or obligor; and the receipt in writing of the survivors or last survivor of them, or of the personal representative of the last survivor, shall be a complete discharge for all money or money's worth for the time being due, notwithstanding any notice to the payer of a severance of the joint account.

Application of section.

(2) This section shall apply only if and as far as a contrary intention is not expressed in the mortgage or obligation or transfer, and shall have effect subject to the terms thereof. R.S.O. 1914, c. 133, s. 4.

JOINT CONTRACTS.

Remedies against representatives of deceased joint contractors.

4. In case any one or more joint contractors, obligors or partners die the person interested in the contract, obligation or promise entered into by such joint contractors, obligors or partners may proceed by action against the representatives

of the deceased contractor, obligor or partner in the same manner as if the contract, obligation or promise had been joint and several, and this notwithstanding there may be another person liable under such contract, obligation or promise still living, and an action pending against such person; but the property and effects of shareholders in chartered banks or the members of other incorporated companies shall not be liable to a greater extent than they would have been if this section had not been passed. R.S.O. 1914, c. 133, s. 5.

5.—(1) A covenant, and a contract under seal, and a bond or obligation under seal, made with two or more jointly to pay money or to make a conveyance, or to do any other act to them or for their benefit, shall be deemed to include and shall by virtue of this Act imply an obligation to do the act to or for the benefit of the survivor or survivors of them, and to or for the benefit of any other person to whom the right to sue on the covenant, contract, bond or obligation devolves.

Effect of covenant with two or more jointly.
Imp. Act.
44-45 Vict.
c. 41, s. 60.

(2) This section shall extend to a covenant implied by *The Conveyancing and Law of Property Act*.

Idem.
Rev. Stat.
c. 137.

(3) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond or obligation, and shall have effect subject to the covenant, contract, bond or obligation and to the provisions therein contained. R.S.O. 1914, c. 133, s. 6.

Contrary intention.

BILLS OF LADING.

6.—(1) Every consignee of goods named in a bill of lading and every endorsee of a bill of lading to whom the property in the goods therein mentioned passes upon, or by reason of such consignment or endorsement, shall have and be vested with all rights of action, and be subject to the same liabilities in respect of the goods as if the contract contained in the bill of lading had been made with him.

Rights and liabilities of consignees and endorsees of bills of lading.
Imp. Act
18-19 V.
c. 111.

(2) Nothing in this section shall prejudice or affect any right of stoppage *in transitu*, or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee, by reason or in consequence of his being such consignee or endorsee, or of his receipt of the goods by reason of or in consequence of such consignment or endorsement.

Certain rights and liabilities not affected.

(3) Every bill of lading in the hands of a consignee or endorsee for valuable consideration representing goods to have been shipped on board a vessel, train or conveyance of

Bills of lading as evidence against signer.

any kind shall be conclusive evidence of shipment as against the master or other person signing the same, notwithstanding that the goods or some part thereof may not have been so shipped, unless the holder of the bill of lading has actual notice at the time of receiving the same that the goods had not in fact been laden on board, or unless the bill of lading has a stipulation to the contrary; but the master or other person so signing may exonerate himself in respect to such misrepresentation by showing that it was caused without any default on his part, and wholly by the fraud of the shipper or of the holder, or of some person under whom the holder claims. R.S.O. 1914, c. 133, s. 7.

WAREHOUSE RECEIPTS, ETC., AS COLLATERAL SECURITY.

Assignment
of warehouse
receipts.

7.—(1) The owner of or other person entitled to receive the goods included in a warehouse receipt or bill of lading may transfer such warehouse receipt or bill of lading by endorsement thereon signed by himself, his attorney or agent to any other person as collateral security for any debt owing by him.

What passes
under
endorsement.

(2) The endorsement shall from the date thereof vest in the transferee all the right and title of the endorser to or in such goods subject to the right of the endorser to have such warehouse receipt or bill of lading re-transferred to him if the debt is paid when due.

Rights of
transferee.

(3) If the debt is not paid when due the person to whom such warehouse receipt or bill of lading was so transferred may sell the goods and retain the proceeds or so much thereof as will be equal to the amount of the debt, and shall return the overplus, if any, to the endorser. R.S.O. 1914, c. 133, s. 8.

Warehouse
receipt or bill
of lading
given by
owner who is
warehouse
man.

8. Where a person by whom a warehouse receipt or bill of lading might be given for goods in his capacity as a miller, or the owner or keeper of a harbour, cove, pond, wharf, yard, warehouse, shed, storehouse or other place for the storage of goods delivered to him as bailee, master of a vessel or carrier, is the owner of or entitled himself otherwise than in such capacity to receive the goods, any warehouse receipt or bill of lading, or any acknowledgment or certificate intended to answer the purpose thereof, given and endorsed by such person shall be as valid and effectual for the purposes of this Act as if the warehouse receipt, bill of lading, acknowledgment or certificate had been given by one person and endorsed by another. R.S.O. 1914, c. 133, s. 9.

As to goods
manufactured from
articles
pledged.

9. If goods are manufactured or produced from the goods or any of them included in or covered by any warehouse receipt, while so covered, the person holding such warehouse

receipt shall hold or continue to hold such goods during the process and after the completion of such manufacture or production with the same right and title and for the same purposes and upon the same conditions as he held or could have held the original goods. R.S.O. 1914, c. 133, s. 10.

10.—(1) No goods other than timber, boards, deals, staves, sawlogs or other lumber shall be held in pledge for any period exceeding six months. Limit of time for holding goods in pledge.

(2) No lumber, boards, deals, staves, sawlogs or other lumber shall be held in pledge for any period exceeding twelve months. Idem.

(3) No transfer of a bill of lading or warehouse receipt shall be made under this Act to secure the payment of any debt unless the debt is contracted at the time of the acquisition of the bill of lading or warehouse receipt, or upon the written promise or agreement that such bill of lading or warehouse receipt would be given to such person. R.S.O. 1914, c. 133, s. 11. When the debt may be incurred.

11. All advances made on the security of a bill of lading or warehouse receipt shall give to the person making the advances a claim for the re-payment of the advances on the goods therein mentioned, or into which they have been converted, prior to and by preference over the claim of any unpaid vendor or other creditor, save and except claims for wages for labour performed in making and transporting timber, boards, deals, staves, sawlogs or other lumber; but such preference shall not be given over the claim of an unpaid vendor who had a lien upon the goods at the time of the acquisition by such person of the bill of lading or warehouse receipt, unless the same was acquired by him without knowledge of such lien. R.S.O. 1914, c. 133, s. 12. Prior claim of person making advance over unpaid vendor.

12. In the event of the non-payment at maturity of any debt or liability secured by a bill of lading or warehouse receipt the holder thereof may sell the goods mentioned therein or so much thereof as will suffice to pay such debt or liability with interest and expenses, returning the surplus, if any, to the person from whom the bill of lading or warehouse receipt, or the goods mentioned therein, as the case may be, were acquired; but such power of sale shall be exercised subject to the following provisions: Sale of goods on non-payment of debt. Requirements.

(a) No sale of any timber, boards, deals, staves, sawlogs or other lumber shall be made under this Act without the consent in writing of the owner until notice of the time and place of such sale has been given by registered letter to the last Notice of sale of timber, etc.

known address of the pledgor at least thirty days before the sale thereof.

Notice of sale of other goods.

(b) No goods other than timber, boards, deals, staves, sawlogs or other lumber shall be sold under the provisions of this section without the consent of the owner until notice of the time and place of sale has been given by a registered letter to the last known address of the pledgor thereof at least ten days before the sale thereof.

Sale to be by auction.
R.S.C. c. 29,
s. 89.

(c) Every sale under such power of sale without the consent of the owner shall be made by public auction after notice thereof by advertisement in at least two newspapers published in or nearest to the place where the sale is to be made, stating the time and place thereof. R.S.O. 1914, c. 133, s. 13.

Transfer of warehouse receipts for crude petroleum issued by incorporated companies.

13.—(1) Every transportation receipt, warehouse receipt, accepted order and certificate for crude petroleum, issued by any incorporated company authorized to carry on the business of warehousing, shall be transferable by endorsement, either special or in blank, and upon being endorsed in blank shall become transferable by delivery, and every such endorsement or transfer by delivery shall transfer all right of property and possession of the petroleum mentioned in any such transportation or warehouse receipt, accepted order or certificate, to the endorsee or transferee thereof, subject to the terms and conditions of such transportation or warehouse receipt, accepted order or certificate as fully and completely as if a sale of the petroleum mentioned therein had been made in the ordinary way.

Idem.

(2) On the delivery of any petroleum mentioned in such document by such company in good faith, to a person in possession of such transportation or warehouse receipt accepted order or certificate so endorsed or transferred the company shall be freed from all further liability in respect thereof, and the endorsee or transferee or holder of every such transportation or warehouse receipt, accepted order or certificate to whom the property in the petroleum mentioned therein passes by reason of such endorsement or delivery, shall have transferred to and vested in him all rights of action and be subject to the same liabilities in respect of such petroleum as if the contract contained in the transportation or warehouse receipt, accepted order or certificate had been made by the company with himself. R.S.O. 1914, c. 133, s. 14.

STIPULATIONS AS TO TIME.

14. Stipulations in contracts as to time or otherwise which would not, before the passing of *The Ontario Judicature Act, 1881*, have been deemed to be or to have become of the essence of such contracts in a court of equity shall receive in all courts the same construction and effect as they would prior to the passing of that Act have received in equity. R.S.O. 1914, c. 133, s. 15.

Construction
of stipula-
tions not
of the essence
of the con-
tract.
44 Vict. c. 5.

SATISFACTION BY PART PERFORMANCE.

15. Part performance of an obligation either before or after a breach thereof when expressly accepted by the creditor in satisfaction or rendered in pursuance of an agreement for that purpose, though without any new consideration, shall be held to extinguish the obligation. R.S.O. 1914, c. 133, s. 16.

Part per-
formance.

CHAPTER 162.

The Assignments and Preferences Act.

Interpreta-
tion.

"Judge."

1. In this Act,

"Judge" shall mean a judge of the county or district court of the county or district in which the assignment is required to be registered. R.S.O. 1914, c. 134, s. 2.

Where judge
disqualified.

2. Where a judge is disqualified to act in a matter arising under this Act a judge of the county or district court of an adjoining county or district shall have jurisdiction to act in his place. R.S.O. 1914, c. 134, s. 3.

NULLITY OF CERTAIN JUDGMENTS AND TRANSFERS.

Nullity of
certain con-
fessions of
judgment,
etc., etc.

3. Every confession of judgment, *cognovit actionem* or warrant of attorney to confess judgment given by a person, being at the time in insolvent circumstances or unable to pay his debts in full or knowing himself to be on the eve of insolvency, voluntarily or by collusion with a creditor with intent thereby to defeat, hinder, delay or prejudice his creditors wholly or in part, or to give one or more of his creditors a preference over his other creditors, or over any one or more of them, shall be null and void as against the creditors of the person giving the same and shall be ineffectual to support any judgment or execution. R.S.O. 1914, c. 134, s. 4.

Nullity of
gifts, trans-
fers, etc.,
made with
intent to
defeat or
prejudice
creditors.

4.—(1) Subject to the provisions of section 5 every gift, conveyance, assignment or transfer, delivery over or payment of goods, chattels or effects, or of bills, bonds, notes or securities, or of shares, dividends, premiums or bonus in any bank, company or corporation, or of any other property, real or personal, made by a person at a time when he is in insolvent circumstances or is unable to pay his debts in full, or knows that he is on the eve of insolvency, with intent to defeat, hinder, delay or prejudice his creditors, or any one or more of them, shall, as against the creditor or creditors injured, delayed or prejudiced, be null and void.

Unjust
preferences.

(2) Subject to the provisions of section 5 every such gift, conveyance, assignment or transfer, delivery over or payment made by a person being at the time in insolvent circumstances, or unable to pay his debts in full, or knowing himself to be

on the eve of insolvency, to or for a creditor with the intent to give such creditor an unjust preference over his other creditors or over any one or more of them shall, as against the creditor or creditors injured, delayed, prejudiced or postponed, be null and void.

(3) Subject to the provisions of section 5 if such a transaction with or for a creditor has the effect of giving that creditor a preference over the other creditors of the debtor or over any one or more of them it shall in and with respect to any action or proceeding which, within sixty days thereafter, is brought, had or taken to impeach or set aside such transaction be presumed *prima facie* to have been made with the intent mentioned in subsection 2, and to be an unjust preference within the meaning hereof whether the same is made voluntarily or under pressure.

When there is presumption of intention if transaction has effect of unjust preference.

If action brought.

(4) Subject to the provisions of section 5 if such a transaction with or for a creditor has the effect of giving that creditor a preference over the other creditors of the debtor or over any one or more of them it shall, if the debtor within sixty days after the transaction makes an assignment for the benefit of his creditors, be presumed *prima facie* to have been made with the intent mentioned in subsection 2, and to be an unjust preference within the meaning hereof whether the same be made voluntarily or under pressure.

Idem.

If assignment made.

(5) The word "creditor" in the fifth and sixth lines of subsection 2, in the second and third lines of subsection 3, and in the second and third lines of subsection 4, shall include any surety and the endorser of any promissory note or bill of exchange who would upon payment by him of the debt, promissory note or bill of exchange, in respect of which such suretyship was entered into or such endorsement was given, become a creditor of the person giving the preference within the meaning of these subsections. R.S.O. 1914, c. 134, s. 5.

"Creditor" for certain purposes to include surety and endorser.

ASSIGNMENTS FOR GENERAL BENEFIT OF CREDITORS.

5.—(1) Nothing in the next preceding section shall apply to an assignment made to the sheriff of the county or district in which the debtor resides or carries on business or, with the consent of a majority of his creditors having claims of \$100 and upwards computed according to the provisions of section 24, to another assignee resident within Ontario, for the purpose of paying rateably and proportionately and without preference or priority all the creditors of the debtor their just debts; nor to any *bona fide* sale or payment made in the ordinary course of trade or calling to an innocent purchaser or person; nor to any payment of money to a creditor, nor to any *bona fide* conveyance, assignment, transfer or delivery over of any goods or property of any kind, which is made in consideration of a present actual *bona fide* payment in money,

Assignments for benefit of creditors and bona fide sales, etc., protected.

or by way of security for a present actual *bona fide* advance of money, or which is made in consideration of a present actual *bona fide* sale or delivery of goods or other property where the money paid, or the goods or other property sold or delivered bear a fair and reasonable relative value to the consideration therefor.

Transfer to creditor of consideration for sale invalid.

(2) In the case of a valid sale of goods or other property, and payment or transfer of the consideration or part thereof by the purchaser to a creditor of the vendor, under circumstances which would render void such a payment or transfer by the debtor personally and directly, the payment or transfer, even though valid as respects the purchaser, shall be void as respects the creditor to whom the same is made.

Effect of assignment not in accordance with Act.

(3) Every assignment for the general benefit of creditors, which is not void under section 4, but is not made to the sheriff, nor to any other person with the prescribed consent of creditors, shall be void as against a subsequent assignment which is in conformity with this Act, and shall be subject in other respects to the provisions thereof until and unless a subsequent assignment is executed in accordance therewith.

Security given up upon void payment to be returned.

(4) Where a payment has been made which is void under this Act, and any valuable security was given up in consideration of the payment the creditor shall be entitled to have the security restored, or its value made good to him before, or as a condition of, the return of the payment.

Exceptions.

(5) Nothing herein shall

Wages.
Rev. Stat.
c. 176.

(a) affect *The Wages Act*, or prevent a debtor providing for payment of wages due by him in accordance with the provisions of that Act;

Surrender of securities.

(b) affect any payment of money to a creditor where such creditor, by reason or on account of such payment, has lost or been deprived of, or has in good faith given up, any valid security which he held for the payment of the debt so paid unless the security is restored or its value made good to the creditor;

Exchange of securities.

(c) apply to the substitution in good faith of one security for another security for the same debt so far as the debtor's estate is not thereby lessened in value to the other creditors; or

Certain securities to be valid.

(d) invalidate a security given to a creditor for a pre-existing debt where, by reason or on account of the giving of the security, an advance in money is made to the debtor by the creditor in the *bona fide* belief that the advance will enable the debtor to continue his trade or business and to pay his debts in full. R.S.O. 1914, c. 134, s. 6.

6. No person other than a permanent and *bona fide* resident of Ontario shall be assignee under an assignment within the provisions of this Act, nor shall any assignee delegate his duties as assignee to or appoint as deputy any person who is not a permanent and *bona fide* resident of Ontario; and no charge shall be made or recoverable against the assignor or his estate for any services or other expenses of any such assignee, deputy or delegate of any assignee who is not a permanent and *bona fide* resident of Ontario. R.S.O. 1914, c. 134, s. 7.

Residence of assignee.

7. Every assignment made under this Act for the general benefit of creditors, if the property is described in the words "all my personal property which may be seized and sold under execution and all my real estate, credits, and effects," or in words to the like effect, shall vest in the assignee all the real and personal estate, rights, property, credits, and effects, whether vested or contingent, belonging to the assignor at the time of the assignment, except such as are by law exempt from seizure or sale under execution, subject, however, as regards land, to the provisions of *The Registry Act* and *The Land Titles Act*. R.S.O. 1914, c. 134, s. 8.

Form of assignment for general benefit of creditors.

Rev. Stat. cc. 155, 158.

[As to the preferential lien of a landlord, see *Landlord and Tenant Act*, Rev. Stat. c. 190.]

8. Every assignment for the general benefit of creditors, whether it is or is not expressed to be made under or in pursuance of this Act, and whether the assignment does or does not include all the real and personal estate of the assignor, shall vest the estate, whether real or personal or partly real and partly personal, thereby assigned in the assignee therein named for the general benefit of creditors, and such assignment and the property thereby assigned shall be subject to all the provisions of this Act, and the same shall apply to the assignee named in such assignment. R.S.O. 1914, c. 134, s. 9.

All assignments for general benefit of creditors to be subject to this Act.

9. If an assignor executing an assignment under this Act for the general benefit of his creditors owes debts both individually and as a member of a partnership, or as a member of different partnerships, the claims shall rank first upon the estate by which the debts they represent were contracted, and shall only rank upon the other or others after all the creditors of such other estate or estates have been paid in full. R.S.O. 1914, c. 134, s. 10.

How claims are to rank where different estates.

10.—(1) A majority in number and value of the creditors who have proved claims to the amount of \$100 or upwards may substitute for the sheriff, or for an assignee under an assignment to which subsection 3 of section 5 applies, a person residing in the county or district in which the assignor resided or carried on business at the time of the assignment.

Appointment of substituted assignee.

Removal,
substitution
or addition.

(2) An assignee may be removed and another substituted, or an additional assignee appointed by the judge.

Death of
assignee.

(3) Where an assignee dies a new assignee may be appointed in the manner provided by subsection 2.

Effect on
estate.

(4) Where a new or additional assignee is appointed the estate shall vest in him or in him jointly with his co-assignee without a conveyance or transfer, and he shall register a verified copy of the resolution of the creditors or of the order appointing him in the office in which the assignment was registered.

Registration.

(5) A verified copy of the resolution or of the order may be registered in the proper registry or land titles office and the registration thereof shall have the same effect as the registration of a conveyance. R.S.O. 1914, c. 134, s. 11.

Rights of
assignee.

11.—(1) Except as in this section is otherwise provided the assignee shall have the exclusive right of suing for the rescission of agreements, deeds and instruments or other transactions made or entered into in fraud of creditors or in violation of this Act.

Right of
creditor in
certain cases
if assignee
refuses.

(2) Where a creditor desires to cause any proceeding to be taken which, in his opinion, would be for the benefit of the estate, and the assignee under the authority of the creditors or inspectors refuses or neglects to take such proceeding after being required so to do the creditor shall have the right to obtain an order of the judge authorizing him to take the proceeding in the name of the assignee, but at his own expense and risk, upon such terms and conditions as to indemnity to the assignee as the judge may prescribe, and thereupon any benefit derived from the proceeding shall, to the extent of his claim and full costs, belong exclusively to the creditor instituting the same for his benefit, but if, before such order is obtained, the assignee signifies to the judge his readiness to institute the proceeding for the benefit of the creditors, the order shall prescribe the time within which he shall do so, and in that case the advantage derived from the proceeding, if instituted within such time, shall belong to the estate. R.S.O. 1914, c. 134, s. 12.

Following
proceeds of
property
fraudulently
transferred.

12.—(1) In the case of a gift, conveyance, assignment or transfer of any property, real or personal, which is invalid against creditors, if the person to whom the gift, conveyance, assignment or transfer was made shall have sold or disposed of, realized or collected the property or any part thereof, the money or other proceeds may be seized or recovered in any action by a person who would be entitled to seize and recover the property if it had remained in the possession or control of the debtor or of the person to whom the gift, conveyance, transfer, delivery or payment was made, and such right to seize and recover shall belong not only to an assignee for the

general benefit of the creditors of the debtor but, where there is no such assignment, to all creditors of the debtor.

(2) Where there is no assignment for the benefit of creditors, and the proceeds are of such a character as to be seizable under execution, they may be seized under the execution of any creditor and shall be subject to the provisions of *The Creditors Relief Act*. Taking proceeds under execution. Rev. Stat. c. 113.

(3) Where there is no assignment for the benefit of creditors, and whether the proceeds are or are not of such a character as to be seizable under execution, an action may be brought therefor by a creditor, whether an execution creditor or not, on behalf of himself and all other creditors, or such other proceedings may be taken as may be necessary to render the proceeds available for the general benefit of the creditors. Creditor suing on behalf of himself and other creditors.

(4) This section shall not apply as against innocent purchasers of the property. R.S.O. 1914, c. 134, s. 13. Protection of innocent purchasers.

13. An assignment for the general benefit of creditors under this Act shall take precedence of attachments, garnishee orders, judgments, executions not completely executed by payment, and orders appointing receivers by way of equitable execution subject to the lien, if any, of an execution creditor for his costs where there is but one execution in the sheriff's hands or to the lien, if any, for his costs of the creditor, who has the first execution in the sheriff's hands. R.S.O. 1914, c. 134, s. 14. Assignments to take precedence of attachments, etc.

14. Where the Crown has a claim in respect of estreated bail against the estate of a person who makes an assignment for the benefit of his creditors the Lieutenant-Governor in Council may waive any preference in respect of such claim which the Crown has against such estate by virtue of its prerogative right. R.S.O. 1914, c. 134, s. 15. Waiver of claims by Crown.

15. No advantage shall be obtained by any creditor by reason of any mistake, defect or imperfection in any assignment under this Act for the general benefit of creditors if the same can be amended or corrected, and any such mistake, defect or imperfection shall be amended by the judge on the application of the assignee or of any creditor of the assignor, and on such notice to other parties concerned as the judge shall think reasonable, and the amendment, when made, shall have relation back to the date of the assignment, but not so as to prejudice the rights of innocent purchasers. R.S.O. 1914, c. 134, s. 16. Amendment by judge.

16.—(1) A notice of the assignment shall forthwith, after the delivery thereof to him or his assent thereto, be published by the assignee at least once in the *Ontario Gazette* and not Publishing notice of assignment.

less than twice in one newspaper having a general circulation in the county or district in which the property assigned is situate.

Registering
assignment.

(2) The assignment or a copy thereof shall also, within five days from the execution thereof, be registered by the assignee, together with an affidavit of a witness thereto of the due execution of the assignment, in the office of the clerk of the county or district court of the county or district in which the assignor, if a resident in Ontario, resided at the time of the execution thereof, or if not a resident then in the office of the clerk of the county or district court of the county or district where the personal property so assigned or where the principal part thereof is at the time of the execution of such assignment; and the clerk shall number and enter such assignments and endorse thereon the time of receiving the same, and the same shall be open for the inspection of all persons desiring to inspect the same.

Fees of
clerk.

Rev. Stat.
c. 164.

(3) The clerk shall be entitled to the same fees for services as if the assignment had been registered under *The Bills of Sale and Chattel Mortgage Act*.

Provisional
County of
Haliburton.

(4) For the purposes of subsection 2 the Provisional County of Haliburton shall be deemed part of the County of Victoria. R.S.O. 1914, c. 134, s. 17.

Penalty for
neglecting
publication
or registra-
tion.

17.—(1) If the notice is not published as provided by the next preceding section, or if the assignment is not registered within five days from the delivery thereof to the assignee or his assent thereto, the assignee shall incur a penalty of \$10 for each and every day during which the default continues.

Onus of
proof of
delivery or
assent.

(2) The burden of proving the time of such delivery or assent shall be upon the assignee.

Liability of
sheriff.

(3) Where the assignment is made to a sheriff he shall not incur the penalty unless he has been paid or tendered the cost of advertising and of registering the assignment, nor shall he be bound to act under the assignment until his costs in that behalf are paid or tendered to him. R.S.O. 1914, c. 134, s. 18.

Compelling
publication
and
registration.

18. If the assignment is not registered, or notice thereof is not published, the judge may, upon the application of any person interested in the assignment, by order enforce the registration of the assignment or the publication of the notice. R.S.O. 1914, c. 134, s. 19.

(As to costs of order, see *The Judges Orders Enforcement Act*, Rev. Stat. c. 111.)

Omission to
publish, etc.

19. The omission to publish or register as required by section 16 shall not, nor shall any irregularity in the publication or registration, invalidate the assignment. R.S.O. 1914, c. 134, s. 20.

DUTIES AND POWERS OF ASSIGNEE AND INSPECTOR.

20.—(1) It shall be the duty of the assignee immediately to inform himself, by reference to the assignor and his records of account, of the names and residences of the assignor's creditors, and, within five days from the date of the assignment, to call a meeting of the creditors for the appointment of inspectors and the giving of directions with reference to the disposal of the estate by mailing prepaid and registered to every creditor known to him a notice calling the meeting to be held in his office or some other convenient place to be named in the notice not later than twelve days after the mailing thereof, and by advertisement in the *Ontario Gazette*. Duty to call meeting of creditors.
Notice thereof.

(2) All other meetings to be held shall be called in like manner. R.S.O. 1914, c. 134, s. 21. Other meetings.

21.—(1) The creditors at any meeting may appoint one or more inspectors who shall superintend and direct the proceedings of the assignee in the management and winding up of the estate, and may also at any subsequent meeting for that purpose revoke the appointment of any inspector. Appointment of inspectors.
Revocation.

(2) Where the appointment of an inspector is revoked or where an inspector dies, resigns his office or leaves Ontario the creditors at any meeting may appoint another inspector to take his place. Appointment of another inspector.

(3) An inspector shall not directly or indirectly purchase any part of the stock-in-trade, debts or other assets of the assignor. R.S.O. 1914, c. 134, s. 22. Inspector not to purchase assets.
38 V. (Dom.)
c. 16, s. 35.

22.—(1) In case of a request in writing signed by a majority of the creditors having claims duly proved of \$100 and upwards, computed according to the provisions of section 24, it shall be the duty of the assignee, within two days after receiving such request, to call a meeting of the creditors for a day not later than twelve days after he receives the request, and in case of default the assignee shall incur a penalty of \$25 for every day after the expiration of the time limited for calling the meeting until it is called. Meeting of creditors by request of majority thereof.
Penalty for not calling meeting.

(2) In case a sufficient number of creditors do not attend the meeting mentioned in section 20, or fail to give directions with reference to the disposal of the estate, the judge may give such directions as he may deem necessary for that purpose. R.S.O. 1914, c. 134, s. 23. Power of judge.

23. At any meeting of creditors the creditors may vote in person or by proxy authorized in writing, but no creditor whose vote is disputed shall be entitled to vote until he has filed with the assignee an affidavit in proof of his claim, stating the amount and nature thereof. R.S.O. 1914, c. 134, s. 24. Voting at meeting.

Scale of
votes.

24.—(1) Subject to the provisions of section 10 all questions at meetings of creditors shall be decided by the majority of votes, and for such purpose the votes of creditors shall be calculated as follows:

For every claim of or over \$100 and not exceeding \$200,
one vote.

For every claim of or over \$200 and not exceeding \$500,
two votes.

For every claim of or over \$500 and not exceeding \$1,000,
three votes.

For every additional \$1,000 or fraction thereof, one vote.

Upon claims
acquired
after
assignment.

(2) No person shall be entitled to vote on a claim acquired after the assignment unless the entire claim is acquired, but this shall not apply to persons acquiring notes, bills or other securities upon which they are liable.

Casting vote.

(3) In case of a tie the assignee or, if there are two assignees, the assignee nominated for that purpose by the creditors, or by the judge if none has been nominated by the creditors, shall have a casting vote.

Valuing
securities.

(4) Every creditor in his proof of claim shall state whether he holds any security for his claim or any part thereof; and if such security is on the estate of the assignor, or on the estate of a third person for whom the assignor is only secondarily liable, he shall put a specified value thereon and the assignee, under the authority of the creditors, may either consent to the creditor ranking for the claim after deducting such valuation, or he may require from the creditor an assignment of the security at an advance of ten per centum upon the specified value to be paid out of the estate as soon as the assignee has realized such security; and in such case the difference between the value at which the security is retained and the amount of the gross claim of the creditor shall be the amount for which he shall rank and vote in respect of the estate.

Right to re-
value in cer-
tain cases.

(5) If a creditor's claim is based upon a negotiable instrument upon which the assignor is only indirectly or secondarily liable, and which is not mature or exigible, such creditor shall be considered to hold security within the meaning of this section, and shall put a value on the liability of the person primarily liable thereon as being his security for the payment thereof; but after the maturity of such liability and its non-payment, he shall be entitled to amend his claim and revalue his security.

When credi-
tor holding
security fails
to value
same.

(6) Where a person claiming to be entitled to rank on the estate holds security for his claim, or any part thereof, of such a nature that he is required by this Act to value the same, and he fails to value such security the judge, upon

summary application by the assignee or by any other person interested in the estate, of which application at least three days' notice shall be given to the claimant, may order that, unless a specified value be placed on such security and notified in writing to the assignee within a time to be limited by the order, the claimant shall, in respect of the claim, or the part thereof for which the security is held, in case the security is held for part only of the claim, be wholly barred of any right to share in the proceeds of such estate.

Powers of
judge
thereon.

(7) If a specified value is not placed on such security, and notified in writing to the assignee according to the exigency of the order, or within such further time as the judge may by subsequent order allow, the claim, or the part, as the case may be, shall be wholly barred as against such estate but without prejudice to the liability of the assignor therefor.

Consequences
of neglect
of order.

Liability of
assignor.

R.S.O. 1914, c. 134, s. 25.

PROOF OF CLAIM.

25.—(1) Every person claiming to be entitled to rank on the estate shall furnish to the assignee particulars of his claim proved by affidavit and such vouchers as the nature of the case admits of.

Proof of
claim.

(2) Where a person claiming to be entitled to rank on the estate does not, within a reasonable time after receiving notice of the assignment and of the name and address of the assignee, furnish to the assignee satisfactory proofs of his claim as provided by this and the preceding sections, the judge upon summary application by the assignee or by any other person interested in the estate, of which application at least three days' notice shall be given to the claimant, may order that unless the claim be proved to the satisfaction of the judge within a time to be limited by the order, the claimant shall no longer be deemed a creditor of the estate and shall be wholly barred of any right to share in the proceeds thereof.

Limiting
time for
proof of
claim.

(3) If the claim is not so proved within the time so limited, or within such further time as the judge may by subsequent order allow, the same shall be wholly barred, and the assignee shall be at liberty to distribute the proceeds of the estate as if no such claim existed, but without prejudice to the liability of the assignor therefor.

Consequences
of neglect
to prove
claim.

(4) The two next preceding subsections shall not interfere with the protection afforded to assignees by section 51 of *The Trustee Act*.

Not to interfere with
Rev. Stat.
c. 150.

(5) A person whose claim has not accrued due shall nevertheless be entitled to prove under the assignment and to vote at meetings of creditors, but in ascertaining the amount of any such claim a deduction for interest shall be made for

Creditor
may prove
claim not
due.

the time which has to run until the claim becomes due. R.S.O. 1914, c. 134, s. 26.

Contestation of claim.

26.—(1) At any time after the assignee receives from any person claiming to be entitled to rank on the estate proof of his claim notice of contestation of the claim may be served by the assignee upon the claimant.

Limitation.

(2) Within thirty days after the receipt of the notice, or within such further time as the judge may allow, an action shall be brought by the claimant against the assignee to establish the claim, and a copy of the writ in the action, or of the summons in case the action is brought in a division court, shall be served on the assignee; and in default of such action being brought and writ or summons served within the time limited the claim to rank on the estate shall be forever barred.

Service on solicitor of assignee.

(3) The notice by the assignee shall contain the name and place of business of a solicitor upon whom service of the writ or summons may be made; and service upon him shall be deemed sufficient service. R.S.O. 1914, c. 134, s. 27.

Right of assignee to compel plaintiff to proceed with action against assignor.

(4) Where prior to the assignment an action has been commenced against the assignor and is pending at the time of the assignment, the assignee may, by notice served upon the plaintiff in such action, require him to proceed, and he shall be bound to proceed in that action to establish his claim, instead of bringing an action against the assignee as provided for by subsection 2 of this section, and the plaintiff may thereupon apply to the court in which the action is brought for an order adding the assignee as a party defendant in the action, and the assignee may be so added upon such terms as to the costs which may be subsequently incurred as the court or a judge thereof, or the judge making the order, shall direct. 1914, c. 21, s. 29.

Procedure where assignee is satisfied but assignor desires to dispute.

27.—(1) If the assignee is satisfied with the proof adduced in support of a claim, but the assignor disputes the same, the assignor shall do so by notice in writing to the assignee, stating the grounds upon which he disputes the claim; and such notice shall be given within ten days after the assignor is notified in writing by the assignee that he is satisfied with the proof adduced, and not afterwards unless by leave of the judge.

Where assignee does not require action to be brought.

(2) If upon receiving such notice of dispute the assignee does not deem it proper to require the claimant to bring an action to establish his claim he shall notify the assignor in writing of the fact, and the assignor may thereupon, and within ten days of his receiving such notice, apply to the judge for an order requiring the assignee to serve a notice of contestation.

(3) The order shall be made only if, after notice to the assignee, the judge is of opinion that there are good grounds for contesting the claim. Conditions.

(4) If the assignor does not make such an application the decision of the assignee shall, as against him, be final and conclusive. Where decision of assignee shall be final.

(5) If upon the application the claimant consents in writing the judge may, in a summary manner, decide the question of the validity of the claim. Decision of judge on validity of claim.

(6) If an action is brought by the claimant against the assignee the assignor may intervene at the trial, either personally or by counsel, for the purpose of calling and examining or cross-questioning witnesses. R.S.O. 1914, c. 134, s. 28. Intervention by assignor at trial of action.

28.—(1) No property or assets of an estate assigned under the provisions of this Act shall be removed out of Ontario without the order of the judge, and the proceeds of the sale of any such property or assets, and all moneys received on account of any estate shall be deposited by the assignee in an incorporated bank within Ontario, and shall not be withdrawn or removed without the order of the judge, except in payment of dividends and charges incidental to winding up the estate. Retention of assets in the Province and deposit of moneys.

(2) An assignee or any person acting in his stead who violates the provisions of this section shall incur a penalty of \$500. Penalty.

(3) One-half of the penalty shall go to the person suing therefor and the other half shall belong to the estate. Application of penalty.

(4) In default of payment of the penalty and all costs incurred in any action or proceeding for the recovery thereof, within the time limited by the judgment, the court in which the action is brought may order that such assignee or person may be imprisoned for any period not exceeding thirty days, and such assignee or person shall be disqualified from acting as assignee of any estate while such default continues. R.S.O. 1914, c. 134, s. 29. Imprisonment in default of payment of penalty.

29. Upon the expiration of one month from the first meeting of creditors, or as soon as may be thereafter, and afterwards from time to time at intervals of not more than three months, the assignee shall prepare, and keep constantly accessible to the creditors, accounts and statements of his doings as such assignee, and of the position of the estate. R.S.O. 1914, c. 134, s. 30. Accounts to be kept accessible.

30. The law of set-off shall apply to all claims made against the estate, and also to all actions instituted by the assignee for the recovery of debts due to the assignor, in the same manner and to the same extent as if the assignor were plain- Set-off.

tiff or defendant, as the case may be, except in so far as any claim for set-off shall be affected by the provisions of this or any other Act respecting frauds or fraudulent preferences. R.S.O. 1914, c. 134, s. 31.

Dividends
when to be
paid.

31. As large a dividend as can with safety be paid shall be paid by every assignee within twelve months from the date of the assignment, and earlier if required by the inspectors; and thereafter a further dividend shall be paid every six months, and more frequently if required by the inspectors, until the estate is wound up and disposed of. R.S.O. 1914, c. 134, s. 32.

Notice of
dividend
sheet.

32. So soon as a dividend sheet is prepared notice thereof shall be given by registered letter to each creditor, inclosing an abstract of receipts and disbursements, showing what interest has been received by the assignee for money in his hands, together with a copy of the dividend sheet, noting thereon the claims objected to, and stating whether any reservation has or has not been made therefor; and after the expiry of eight days from the date of mailing such notice, abstract and dividend sheet, dividends on all claims not objected to within that period shall be paid. R.S.O. 1914, c. 134, s. 33.

Distributing
moneys and
determining
claims.
Rev. Stat.
c. 113.

33.—(1) The assignee may take the proceedings authorized by section 32 of *The Creditors Relief Act* to be taken by a sheriff, and in that case sections 32 and 33 of that Act shall apply *mutatis mutandis* to proceedings for the distribution of money and determination of claims arising under an assignment made under this Act, with the substitution of "assignee" for "sheriff"; but this section shall not relieve the assignee from mailing to each creditor the abstract and other information required by section 32 of this Act to be sent to creditors so far as the same is not contained in the list sent by him under section 32 of *The Creditors Relief Act*.

To what
judge appli-
cation to be
made.

(2) A judge of the county or district court of the county or district where the assignment is required to be registered shall be the judge to whom applications under this section shall be made. R.S.O. 1914, c. 134, s. 34.

Remunera-
tion of
assignee.

34. The assignee shall receive such remuneration as shall be voted to him by the creditors at any meeting called for the purpose after the first dividend sheet has been prepared, or by the inspectors, in case the creditors fail to provide therefor, subject to review by the judge upon complaint of the assignee or of any creditor. R.S.O. 1914, c. 134, s. 35.

Where re-
munera-
tion not fixed
before the
final divi-
dend.

35. Where the remuneration of the assignee has not been fixed under the next preceding section before the final dividend the assignee may insert in the final dividend sheet, and retain as his remuneration, a sum not exceeding five per centum of the cash receipts, subject to review by the judge;

but no application by the assignee to review the allowance shall be entertained unless the question of his remuneration has been brought before a meeting of creditors competent to decide the same before the preparation of the final dividend sheet. R.S.O. 1914, c. 134, s. 36.

36.—(1) An assignee shall not make any payment or allowance to an inspector beyond his actual and necessary travelling expenses in and about his duties as inspector, except under the authority of a resolution of the creditors passed at a meeting regularly called, fixing the amount thereof, and in the notice calling the meeting the fixing of the remuneration of the inspectors shall be specially mentioned as one of the subjects to be brought before the meeting. Remuneration of inspectors.

(2) An inspector shall not be allowed more than \$4 a day besides actual travelling expenses. R.S.O. 1914, c. 134, s. 37. Limit of allowance.

EXAMINATION OF ASSIGNOR AND OTHERS.

37.—(1) Upon a resolution passed by a majority vote of the creditors present or represented at a meeting of creditors regularly called, or upon the written request of a majority of the inspectors, or upon an order made by the judge, the assignee may examine upon oath before a master, local master, local registrar, deputy clerk of the Crown, judge of the county or district court, special examiner, official referee or any other person named in the order, the assignor or any person who is or has been his agent, clerk, servant, officer or employee of any kind, touching the estate and effects of the assignor, and as to the property and means he had when the earliest of his debts or liabilities existing at the date of the assignment was incurred, and as to the property and means he still has of discharging his debts and liabilities, and as to the disposal he has made of any property since contracting such debt or incurring such liability, and as to any and what debts are owing to him; and the person examined may be required by the assignee to produce upon such examination any property, book, document or paper in his custody, power or control. Examination of assignor or employees.

(2) Unless otherwise ordered the examination shall take place in the county or district within which the person to be examined resides. Where examination to take place.

(3) The rules and procedure of the Supreme Court as to the examination of a judgment debtor, or any clerk or employee or former clerk or employee of a judgment debtor, shall, so far as may be, apply to an examination held under subsection 1. R.S.O. 1914, c. 134, s. 38. Procedure on examination.

38. Any person who has or is believed or suspected to have in his possession or power any book, document or paper of any kind relating in whole or in part to the assignor, his Examination of persons having custody of property of assignor.

dealings or property, and who refuses or fails to produce the same for the inspection of the assignee, within four days after demand in writing by the assignee, may by order of the judge be examined before the judge or any of the officers mentioned in section 37 touching such book, document or paper; and he shall be subject to the same consequences, in the case of neglect to attend or refusal to disclose the matters in respect of which he may be examined or to make such production, as are mentioned in section 40. R.S.O. 1914, c. 134, s. 39.

When assign-
or does not
attend or
refuses
to answer
questions.

39. If the assignor does not attend for examination and does not allege a sufficient excuse for not attending or, if attending, he refuses to disclose his property or his transactions respecting the same, or does not make satisfactory answers respecting the same, or if it appears from such examination that the assignor has concealed or made away with his property in order to defeat or defraud his creditors or any of them, the judge may order the assignor to be committed to the common gaol of the county or district in which he resides for any period not exceeding twelve months. R.S.O. 1914, c. 134, s. 40.

Compelling
attendance
and produc-
tion of
books.

40. Any person other than the assignor liable to be examined shall be subject to the same consequences, in case of neglect to attend or refusal to disclose the matters in respect of which he may be examined or to make production, as a witness in an action in the Supreme Court. R.S.O. 1914, c. 134, s. 41.

CHAPTER 163.

The Sale of Goods Act.

1. In this Act:

- (a) "Action" shall include counterclaim and set-off; Interpretation.
"Action."
- (b) "Buyer" shall mean the person who buys or agrees to buy goods; "Buyer."
- (c) "Contract of sale" shall include an agreement to sell as well as a sale; "Contract of sale."
- (d) "Delivery" shall mean voluntary transfer of possession from one person to another; "Delivery."
- (e) "Document of title" shall include any bill of lading and warehouse receipt, as defined by *The Mercantile Law Amendment Act*, any warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or delivery, the possessor of the document to transfer or receive goods thereby represented; "Document of title."
Rev. Stat.
c. 161.
- (f) "Fault" shall mean wrongful act or default; "Fault."
- (g) "Goods" shall include all chattels personal other than things in action and money; and shall include emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale; "Goods."
- (h) "Plaintiff" shall include a defendant counterclaiming; "Plaintiff."
- (i) "Property" shall mean general property in goods and not merely a special property; "Property."
- (j) "Quality of goods" shall include their state or condition; "Quality."
- (k) "Sale" shall include a bargain and sale as well as a sale and delivery; "Sale."
- (l) "Seller" shall mean a person who sells or agrees to sell goods; "Seller."

"Specific goods."

(m) "Specific goods" shall mean goods identified and agreed upon at the time the contract of sale is made;

"Warranty."

(n) "Warranty" shall mean an agreement with reference to goods which are the subject of a contract of sale but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated.

Things done in good faith.

(2) A thing shall be deemed to be done in good faith within the meaning of this Act when it is in fact done honestly whether it be done negligently or not.

What deemed insolvency.

(3) A person shall be deemed to be insolvent within the meaning of this Act, who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due.

"Deliverable state."

(4) Goods shall be deemed to be in a "deliverable state" within the meaning of this Act when they are in such a state that the buyer would under the contract be bound to take delivery of them. (*See Impl. Act., 56 and 57 Vict., c. 71, s. 62.*) 1920, c. 40, s. 2.

PART I.

FORMATION OF THE CONTRACT.

Contract of Sale.

Sale and agreement to sell.

2.—(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price. There may be a contract of sale between one part owner and another.

Absolute or conditional.

(2) A contract of sale may be absolute or conditional.

What constitutes a sale or agreement to sell.

(3) Where under a contract of sale the property in goods is transferred from the seller to the buyer the contract is called a sale; but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled the contract is called an agreement to sell.

When agreement becomes sale.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred. (*See Impl. Act., 56 and 57 Vict., c. 62, s. 1.*) 1920, c. 40, s. 3.

Capacity.

3.—(1) Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property:

Provided that where necessities are sold and delivered Proviso. to an infant or minor or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

(2) Necessaries in this section mean goods suitable to the conditions in life of such infant or minor or other person. What deemed necessities. and to his actual requirements at the time of the sale and delivery. (*See* Impl. Act, 56 and 57 Viet., c. 62, s. 2.) 1920, c. 40, s. 4.

Formalities of the Contract.

4. Subject to the provisions of this Act and of any statute in that behalf a contract of sale may be made in writing, either with or without seal, or by word of mouth or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties; Contract—how made. Provided that nothing in this section shall affect the law relating to corporations. Proviso. (*See* Impl. Act, 56 and 57, Viet., c. 62, s. 3.) 1920, c. 40, s. 5.

5.—(1) A contract for the sale of any goods of the value of forty dollars or upwards shall not be enforceable by action unless the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the contract or in part payment, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf. Contracts for \$40 or upwards.

(2) The provisions of this section shall apply to every such contract, notwithstanding that the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery. Future delivery.

(3) There is an acceptance of goods within the meaning of this section when the buyer does any act in relation to the goods which recognizes a pre-existing contract of sale, whether there be an acceptance in performance of the contract or not. Acceptance of goods—what constitutes. (*See* Impl. Act, 56 and 57, Viet., c. 62, s. 4.) 1920, c. 40, s. 6.

Subject Matter of Contract.

6.—(1) The goods which form the subject of a contract of sale may be either existing goods owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract of sale, in this Act called "future goods." What goods may be subject of contract.

(2) There may be a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency which may or may not happen. Contingency as to acquisition of goods by vendor.

Sale of
future
goods.

(3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods. (*See* Impl. Act, 56 and 57 Vict., 62, s. 5.) 1920, c. 40, s. 7.

Goods
which
have
perished.

7. Where there is a contract for the sale of specific goods, and the goods without the knowledge of the seller have perished at the time when the contract is made, the contract is void. (*See* Impl. Act, 56 and 57 Vict., c. 62, s. 6.) 1920, c. 40, s. 8.

Goods
perishing
before sale
but after
agreement
to sell.

8. Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement is thereby avoided. (*See* Impl. Act, 56 and 57 Vict., c. 62, s. 7.) 1920, c. 40, s. 9.

The Price.

Ascertain-
ment of
price.

9.—(1) The price in a contract of sale may be fixed by the contract, or may be left to be fixed in manner thereby agreed, or may be determined by the course of dealing between the parties.

Where
price not
deter-
mined.

(2) Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case. (*See* Impl. Act, 56 and 57 Vict., c. 62, s. 8.) 1920, c. 40, s. 10.

Agreement
to sell
at valua-
tion.

10.—(1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party, and such third party cannot or does not make such valuation the agreement is avoided; provided that if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

Valuation
prevented
by act
of party.

(2) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain an action for damages against the party in fault. (*See* Impl. Act, 56 and 57 Vict., c. 62, s. 9.) 1920, c. 40, s. 11.

Conditions and Warranties.

Stipulations
as to
time.

11. Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract. (*See* Impl. Act, 56 and 57 Vict., c. 62, s. 10.) 1920, c. 40, s. 12.

12.—(1) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition, or may elect to treat the breach of such condition as a breach of warranty and not as a ground for treating the contract as repudiated. When condition to be treated as warranty.

(2) Whether a stipulation in a contract of sale is a condition, the breach of which may give rise to a right to treat the contract as repudiated, or a warranty, the breach of which may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated, depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract. Stipulation which may be condition or warranty.

(3) Where a contract of sale is not severable, and the buyer has accepted the goods, or part thereof, or where the contract is for specific goods, the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty, and not as a ground for rejecting the goods and treating the contract as repudiated, unless there be a term of the contract, express or implied, to that effect. Where breach of condition to be treated as breach of warranty.

(4) Nothing in this section shall affect the case of any condition or warranty, fulfillment of which is excused by law by reason of impossibility or otherwise. (*See* Impl. Act, 56 and 57 Vict., c. 62, s. 1.) 1920, c. 40, s. 13. Fulfillment excused by impossibility.

13. In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is: Implied conditions and warranties.

- (a) An implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass;
- (b) An implied warranty that the buyer shall have and enjoy quiet possession of the goods; and
- (c) An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made. (*See* Impl. Act, 56 and 57 Vict., c. 62, s. 12.) 1920, c. 40, s. 14.

14. Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description, and if the sale is by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description. (*See* Impl. Act, 56 and 57 Vict., c. 62, s. 13.) 1920, c. 40, s. 15. Sale by description.

Implied
conditions
as to
quality or
fitness.

15. Subject to the provisions of this Act and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:

- (a) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose, provided that in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.
- (b) Where goods are bought by description from the seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality; provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed;
- (c) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade;
- (d) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith. (*See Impl. Act, 56 and 57 Vict., c. 62, s. 14.*) 1920, c. 40, s. 16.

Sale by Sample.

Sale by
sample.

16.—(1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

Implied
conditions.

- (2) In the case of a contract for sale by sample,
 - (a) There is an implied condition that the bulk shall correspond with the sample in quality;
 - (b) There is an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample; and
 - (c) There is an implied condition that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample. (*See Impl. Act, 56 and 57 Vict., c. 62, s. 15.*) 1920, c. 40, s. 17.

PART II.

EFFECTS OF THE CONTRACT.

Transfer of Property as Between Seller and Buyer.

17. Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained. (*See Impl. Act, 56 and 57 Vict., c. 62, s. 16.*) 1920, c. 40, s. 18. Goods must be ascertained.

18.—(1) Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. Property passes where intended to pass.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case. (*See Impl. Act, 56 and 57 Vict., c. 62, s. 17.*) 1920, c. 40, s. 19. Ascertaining intention.

19. Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer:— Rules for ascertaining intention.

- (a) Rule 1.—Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment or the time of delivery or both be postponed.
- (b) Rule 2.—Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing be done, and the buyer has notice thereof.
- (c) Rule 3.—Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing be done and the buyer has notice thereof.
- (d) Rule 4.—When goods are delivered to the buyer on approval or “on sale or return” or other similar terms, the property therein passes to the buyer:

- (i) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction;
- (ii) If he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

(e) Rule 5—(i) Where there is a contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the appropriation is made.

(ii) Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not), for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract. (*See* Impl. Act, 56 and 57 Vict., c. 62, s. 18.) 1920, c. 40, s. 20.

Reserva-
tion of
right of
disposal.

20.—(1) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to the buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

Goods
deliverable
to order
of seller.

(2) Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is *prima facie* deemed to reserve the right of disposal.

Where
seller
draws on
buyer and
sends
draft with
bill of
lading.

(3) Where the seller of goods draws on the buyer for the price, and transmits the bill of exchange and bill of lading to the buyer together to secure acceptance or payment, of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange, and if

he unlawfully retains the bill of lading the property in the goods does not pass to him. (*See* Impl. Act, 56 and 57 Vict., c. 62, s. 19.) 1920, c. 40, s. 21.

21. Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not, provided:

Risk
prima facie
passes
with pro-
perty.

(a) That where delivery has been delayed through the fault of either the buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault;

(b) That nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party. (*See* Impl. Act, 56 and 57 Vict., c. 62, s. 20.) 1920, c. 40, s. 22.

TRANSFER OF TITLE.

22. Subject to the provisions of this Act, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

Sale by
person
other than
owner.

Provided that nothing in this Act shall affect,—

Proviso.

(a) The provisions of *The Factors Act* or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof;

Rev. Stat.,
c. 168.

(b) The validity of any contract of sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction. (*See* Impl. Act, 56 and 57 Vict., c. 62, s. 21.) 1920, c. 40, s. 23.

23. The law relating to market overt shall not apply to any sale of goods which takes place in Ontario. (*See* as to sales in market overt, Impl. Act, 56 and 57 Vict., c. 62, s. 22.) 1920, c. 40, s. 24.

Law as to
market
overt not
to apply.

24. When the seller of goods has a voidable title thereto but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defective title. (*See* Impl. Act, 56 and 57 Vict., c. 62, s. 23.) 1920, c. 40, s. 25.

Sale under
voidable
title.

Seller in
possession
after sale.

25.—(1) Where a person having sold goods continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same.

Buyer in
possession
after sale.

(2) Where a person having bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

"Mercantile
agent."

(3) In this section the term "mercantile agent" shall mean a mercantile agent having, in the customary course of his business as such agent, authority either to sell goods or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods. (*See* Impl. Act, 56 and 57 Viet., c. 62, s. 25.) 1920, c. 40, s. 26.

PART III.

PERFORMANCE OF THE CONTRACT.

Duties of
seller and
buyer.

26. It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them in accordance with the terms of the contract of sale. (*See* Impl. Act, 56 and 57 Viet., c. 62, s. 27.) 1920, c. 40, s. 27.

Payment
and de-
livery
concurrent.

27. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer must be ready and willing to pay the price in exchange for possession of the goods. (*See* Impl. Act, 56 and 57 Viet., c. 62, s. 28.) 1920, c. 40, s. 28.

Rules as
to delivery.

28.—(1) Whether it is for the buyer to take possession of the goods, or for the seller to send them to the buyer, is a question depending in each case on the contract, express or implied, between the parties.

Apart from any such contract, express or implied, the place of delivery is the seller's place of business, if he has one, and, if not, his residence; provided that if the contract be for the sale of specific goods which to the knowledge of the parties, when the contract is made, are in some other place, then that place is the place of delivery.

(2) Where under the contract of sale the seller is bound to send the goods to the buyer but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(3) Where the goods at the time of sale are in the possession of a third person, there is no delivery by the seller to the buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf; provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

(4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5) Unless otherwise agreed, the expenses of and incidental to putting the goods in a deliverable state must be borne by the seller. (*See* Impl. Act, 56 and 57 Viet., c. 62, s. 29.) 1920, c. 40, s. 29.

29.—(1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he must pay for them at the contract rate.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract, and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

(4) The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties. (*See* Impl. Act, 56 and 57 Viet., c. 62, s. 30.) 1920, c. 40, s. 30.

30.—(1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

(2) Where there is a contract for the sale of goods to be delivered by stated instalments which are to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments, or fails to deliver one or

Deliveries.
In absence
of contract.

Where
no time
for deliv-
ery fixed.

Where
goods in
possession
of third
person.

Demand
or tender
of de-
livery.

Expenses
of putting
goods in
deliver-
able state.

Delivery
of wrong
quantity.

Where
quantity
larger
than con-
tracted for.

Goods
not in
accord-
ance with
contract.

Exceptions
as to trade
customs,
etc.

Delivery
by instal-
ments.

Where
instal-
ments are
not deliv-
ered as
contracted
for.

more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case whether the breach of contract is a repudiation of the whole contract, or whether it is a severable breach giving rise to a claim for compensation but not to a right to treat the whole contract as repudiated. (*See* Impl. Act, 56 and 57 Vict., c. 62, s. 31.) 1920, c. 40, s. 31.

Delivery
to carrier.

31.—(1) Where, in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer, the delivery of the goods to a carrier whether named by the buyer or not, for the purpose of transmission to the buyer, is *prima facie* deemed to be a delivery of the goods to the buyer.

Seller's
contract
with
carrier.

(2) Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omits so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself or may hold the seller responsible in damages. (*See* Impl. Act, 56 and 57 Vict., c. 62, s. 32.) 1920, c. 40, s. 32. *part.*

Agreement
for deliv-
ery else-
where
than at
place of
sale.

32. Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer must nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit. (*See* Impl. Act, 56 and 57 Vict., c. 62, s. 33.) 1920, c. 40, s. 33.

Right of
buyer as
to exami-
nation.

33.—(1) Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

Seller to
afford op-
portunity
for exam-
ination.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract. (*See* Impl. Act, 56 and 57 Vict., c. 62, s. 34.) 1920, c. 40, s. 34.

Accept-
ance of
goods.

34. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them. (*See* Impl. Act, 56 and 57 Vict., c. 62, s. 35.) 1920, c. 40, s. 35.

35. Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them. (*See* Impl. Act, 56 and 57 Vict., c. 62, s. 36.) 1920, c. 40, s. 36.

Effect of
refusal to
accept.

36. When the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not, within a reasonable time after such request, take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods, provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract (*See* Impl. Act, 56 and 57 Vict., c. 62, s. 37.) 1920, c. 40, s. 37.

Wrongful
neglect or
refusal to
take de-
livery.

PART IV.

RIGHTS OF UNPAID SELLER AGAINST THE GOODS.

General Rights.

37.—(1) The seller of goods is deemed to be an “un-^{“Unpaid}paid seller” within the meaning of this Act—

seller.”

(a) when the whole of the price has not been paid or tendered;

(b) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(2) In this Part of this Act the term “seller” includes “Seller.” any person who is in the position of a seller, as for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid or is directly responsible for the price. (*See* Impl. Act, 56 and 57 Vict., c. 62, s. 38.) 1920, c. 40, s. 38.

38.—(1) Subject to the provisions of this Act and of any statute in that behalf, notwithstanding that the pro-^{Rights of}perty in the goods may have passed to the buyer, the unpaid^{unpaid} seller of goods, as such, has by implication of law—^{seller.}

(a) A lien on the goods or right to retain them for the^{Lien.} price while he is in possession of them;

Stoppage
in trans-
itu.

(b) In case of the insolvency of the buyer, a right of stopping the goods in transitu after he has parted with the possession of them;

Re-sale.

(c) A right of re-sale as limited by this Act.

Withhold-
ing de-
livery.

(2) Where the property in goods has not passed to the buyer the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with the rights of lien and stoppage in transitu where the property has passed to the buyer. (*See Impl. Act, 56 and 57 Vict., c. 62, s. 39.*) 1920, c. 40, s. 39.

Unpaid Seller's Lien.

Unpaid
seller's
lien.

39.—(1) Subject to the provisions of this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:

(a) Where the goods have been sold without any stipulation as to credit;

(b) Where the goods have been sold on credit but the term of credit has expired;

(c) Where the buyer becomes insolvent.

Seller in
possession
as agent.

(2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer. (*See Impl. Act, 56 and 57 Vict., c. 62, s. 41.*) 1920, c. 40, s. 40.

Where
part de-
livery
has been
made.

40. Where an unpaid seller has made part delivery of the goods he may exercise his right of lien or retention on the remainder unless such part delivery has been made under such circumstances as to show an agreement to waive the lien or right of retention. (*See Impl. Act, 56 and 57 Vict., c. 62, s. 42.*) 1920, c. 40, s. 41.

Termina-
tion of
lien.

41.—(1) The unpaid seller of goods loses his lien or right of retention thereon—

(a) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;

(b) when the buyer or his agent lawfully obtains possession of the goods;

(c) by waiver thereof.

Lien not
lost by
obtaining
judgment
for price.

(2) The unpaid seller of goods having a lien or right of retention thereon, does not lose his lien or right of retention by reason only that he has obtained judgment for the price of the goods. (*See Impl. Act, 56 and 57 Vict., c. 62, s. 43.*) 1920, c. 40, s. 42.

Stoppage in Transitu.

42. Subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods, has the right of stopping them in transitu, that is to say he may resume possession of the goods as long as they are in course of transit, and may retain them until payment or tender of the price. (*See Impl. Act, 56 and 57 Vict., c. 62, s. 44.*) 1920, c. 40, s. 43.

43.—(1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier by land or water or other bailee, for the purpose of transmission to the buyer, until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee.

(2) If the buyer or his agent in that behalf, obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.

(3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer, or his agent, the transit is at an end, and it is immaterial that a further destination for the goods may have been indicated by the buyer.

(4) If the goods are rejected by the buyer and the carrier or other bailee continues in possession of them, the transit is not deemed to be at an end even if the seller has refused to receive them back.

(5) When goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier, or as agent to the buyer.

(6) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer, or his agent in that behalf, the transit is deemed to be at an end.

(7) Where part delivery of the goods has been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped in transitu unless such part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods. (*See Impl. Act, 56 and 57 Vict., c. 62, s. 45.*) 1920, c. 40, s. 44. *part.*

44.—(1) The unpaid seller may exercise his right of stoppage in transitu either by taking actual possession of the goods or by giving notice of his claim to the carrier or other

bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

Re-deliv-
ery after
notice to
carrier,
etc.

(2) When notice of stoppage in transitu is given by the seller to the carrier or other bailee in possession of the goods, he must re-deliver the goods to or according to the directions of the seller. The expenses of such re-delivery must be borne by the seller. (*See Impl. Act, 56 and 57 Vict., c. 62, s. 46.*) 1920, c. 40, s. 45. *part.*

Re-Sale by Buyer or Seller.

Effect of
subsale
or pledge
by buyer.

Proviso.

45. Subject to the provisions of this Act, the unpaid seller's right of lien or retention or stoppage in transitu is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto. Provided that, where a document of title to goods has been lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for valuable consideration, then, if such last-mentioned transfer was by way of sale the unpaid seller's right of lien or retention or stoppage in transitu is defeated, and if such last-mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or retention or stoppage in transitu can only be exercised subject to the rights of the transferee. (*See Impl. Act, 56 and 57 Vict., c. 62, s. 47.*) 1920, c. 40, s. 46.

Exercise
of right
of lien or
stoppage,—
effect on
contract.

46.—(1) Subject to the provisions of this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien or retention or stoppage in transitu.

Title of
buyer on
resale.

(2) Where an unpaid seller who has exercised his right of lien or retention or stoppage in transitu, re-sells the goods, the buyer acquires a good title thereto as against the original buyer.

Resale and
right to
damages
for breach
of con-
tract.

(3) Where the goods are of a perishable nature, or where the unpaid seller gives notice to the buyer of his intention to re-sell, and the buyer does not, within a reasonable time, pay or tender the price, the unpaid seller may re-sell the goods and recover from the original buyer damages for any loss occasioned by his breach of contract.

Where
re-sale
rescinds
contract.

(4) Where the seller expressly reserves a right of re-sale in case the buyer should make default, and on the buyer

making default, re-sells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim the seller may have for damages. (*See* Impl. Act, 56 and 57 Vict., c. 62, s. 48.) 1920, c. 40, s. 47.

PART V.

ACTIONS FOR BREACH OF THE CONTRACT.

Remedies of the Seller.

47.—(1) Where, under a contract of sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against him for the price of the goods. Action for price.

(2) Where, under a contract of sale, the price is payable on a day certain, irrespective of delivery, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price although the property in the goods has not passed, and the goods have not been appropriated to the contract. (*See* Impl. Act, 56 and 57 Vict., c. 62, s. 49.) 1920, c. 40, s. 48. Where property in goods has not passed.

48.—(1) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for non-acceptance. Action for non-acceptance.

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract. Measure of damages.

(3) Where there is an available market for the goods in question, the measure of damages is *prima facie* to be ascertained by the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept. (*See* Impl. Act, 56 and 57 Vict., c. 62, s. 50.) 1920, c. 40, s. 49. Difference in price.

Remedies of the Buyer.

49.—(1) Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller for damages for non-delivery. Damages for non-delivery.

(2) The measure of damages is the estimated loss directly and naturally resulting in the ordinary course of events, from the seller's breach of contract. Measure of damages.

Difference
in price.

(3) Where there is an available market for the goods in question, the measure of damages is *prima facie* to be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver. (*See Impl. Act, 56 and 57 Vict., c. 62, s. 51.*) 1920, c. 40, s. 50.

Specific per-
formance.

50. In any action for breach of contract to deliver specific or ascertained goods, the court may, if it thinks fit, direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages, and may impose such terms and conditions as to damages, payment of the price, and otherwise, as to the court may seem just. (*See Impl. Act, 56 and 57 Vict., c. 62, s. 52.*) 1920, c. 40, s. 51.

Breach of
warranty.

51.—(1) Where there is a breach of warranty by the seller, or where the buyer elects, or is compelled, to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods, but he may

(a) set up against the seller the breach of warranty in diminution or extinction of the price; or

(b) maintain an action against the seller for damages for the breach of warranty.

Measure
of damages.

(2) The measure of damages for breach of warranty is the estimated loss directly and naturally resulting in the ordinary course of events, from the breach of warranty.

Breach of
warranty
as to
quality.

(3) In the case of breach of warranty of quality such loss is *prima facie* the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty.

Right of
action.

(4) The fact that the buyer has set up the breach of warranty in diminution or extinction of the price does not prevent him from maintaining an action for the same breach of warranty if he has suffered further damage. (*See Impl. Act, 56 and 57 Vict., c. 62, s. 53.*) 1920, c. 40, s. 52.

Other
rights of
buyer pre-
served.

52. Nothing in this Act shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed. (*See Impl. Act, 56 and 57 Vict., c. 62, s. 54.*) 1920, c. 40, s. 53.

PART VI.

SUPPLEMENTARY.

53. Where any right, duty or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage be such as to bind both parties to the contract. (See Impl. Act, 56 and 57 Vict., c. 62, s. 55.) 1920, c. 40, s. 54.

Exclusion
of implied
laws and
conditions.

54. Where by this Act any reference is made to a "reasonable time," the question of what is a reasonable time is a question of fact. (See Impl. Act, 56 and 57 Vict., c. 62, s. 56.) 1920, c. 40, s. 55.

"Reason-
able time"
is a question
of fact.

55. Where any right, duty or liability is declared by this Act, it may, unless otherwise by this Act provided, be enforced by action. (See Impl. Act, 56 and 57 Vict., c. 62, s. 57.) 1920, c. 40, s. 56.

Rights
enforceable
by action.

56. In case of a sale by auction—

Sales
by auction.

- (a) Where goods are put up for sale in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale;
- (b) A sale is complete when the auctioneer announces its completion by the fall of a hammer or in any other customary manner; and until such announcement is made any bidder may retract his bid;
- (c) Where a sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer;
- (d) A sale may be notified to be subject to a reserved or upset price, and a right to bid may also be reserved expressly by or on behalf of the seller;
- (e) Where a right to bid is expressly reserved, but not otherwise, the seller, or any one person on his behalf, may bid at the auction. (See Impl. Act, 56 and 57 Vict., c. 62, s. 58.) 1920, c. 40, s. 57.

Application
of common
law and
law
merchant.

57.—(1) The rules of the common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, and in particular the rules relating to the law of principal and agent and the effect of fraud, misrepresentation, duress or coercion, mistake or other invalidating cause, shall continue to apply to contracts for the sale of goods.

Bills of
sale, etc.,
not affected.

(2) Nothing in this Act shall affect enactments relating to conditional sales, bills of sale or chattel mortgages, or any enactment relating to the sale of goods which is not expressly repealed by this Act.

Act not to
apply to
mortgages,
etc.

(3) The provisions of this Act relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge or other security. (*See Impl. Act, 56 and 57 Vict., c. 62, s. 61.*) 1920, c. 40, s. 58.

CHAPTER 164.

The Bills of Sale and Chattel Mortgage Act.

1. In this Act,Interpre-
tation.

- (a) "Actual and continued change of possession" shall mean such change of possession as is open and reasonably sufficient to afford public notice thereof; R.S.O. 1914, c. 135, s. 2 (a). "Actual and continued change of possession."
- (b) "Creditors" shall include creditors of the mortgagor or bargainor suing on behalf of themselves and other creditors, an assignee in insolvency or trustee in bankruptcy of a mortgagor or bargainor, the liquidator of a company in a winding up proceeding under *The Winding Up Act of Canada*, and an assignee for the general benefit of creditors, as well as creditors having executions against the goods and chattels of the mortgagor or bargainor in the hands of a sheriff or other officer; R.S.O. 1914, c. 135, s. 2 (b); 1927, c. 41, s. 2 (1). "Creditors." R.S.C. (1906), c. 144.
- (c) "Debentures" shall include debentures, debenture stock, notes, bonds or other securities which contain or are entitled to the benefit of a mortgage charge or floating charge on the personal assets of any company; 1927, c. 41, s. 2 (2). "Debentures."
- (d) "Mortgage" shall include a conveyance intended to operate as a mortgage and shall include any deed or instrument by which a charge or floating charge is created upon personal property; (*See also sections 19 and 20*); R.S.O. 1914, c. 135, s. 2 (c); 1927, c. 41, s. 2 (3). "Mortgage."
- (e) "Rolling stock" shall mean and include any locomotive, engine, motor car, tender, snow plough, flanger, and every description of car or of railway equipment designed for movement on its wheels over or upon the rails or tracks of a railway. R.S.O. 1914, c. 135, s. 2 (d). "Rolling Stock."

2. This Act, except section 35, shall not apply to an assignment for the general benefit of creditors to which *The Assignments and Preferences Act* applies. R.S.O. 1914, c. 135, s. 3. Assignment for benefit of creditors excepted. Rev. Stat. c. 162.

Mortgages
of registered
vessels
excepted.

3. This Act shall not apply to mortgages of vessels registered under the provisions of any Act in that behalf. R.S.O. 1914, c. 135, s. 4.

EFFECT OF REGISTERING OR OMITTING TO REGISTER.

Registration
of mortgages
of goods
not attended
with change
of possession.

4. Every mortgage of goods and chattels in Ontario, which is not accompanied by an immediate delivery and an actual and continued change of possession of the things mortgaged, shall be registered as hereinafter provided, together with

Affidavit of
execution.

(a) the affidavit of an attesting witness thereto of the due execution of such mortgage, which affidavit shall also state the date of the execution of the mortgage; and

Contents of
affidavit of
bona fides.

(b) the affidavit of the mortgagee that the mortgagor therein named is justly and truly indebted to the mortgagee in the sum mentioned in the mortgage, that the mortgage was executed in good faith and for the express purpose of securing the payment of money justly due or accruing due and not for the purpose of protecting the goods and chattels mentioned therein against the creditors of the mortgagor, or of preventing the creditors of such mortgagor from obtaining payment of any claim against him or in cases falling within section 5, the affidavit therein prescribed. R.S.O. 1914, c. 135, s. 5; 1927, c. 41, s. 3.

5. Where a mortgage of goods and chattels is made,—

Mortgage to
secure future
advances or
endorsements.

(a) to secure the mortgagee for advances made in pursuance of an agreement in writing to make future advances for the purpose of enabling the borrower to enter into or to carry on business with such advances, the time of repayment thereof not being longer than one year from the making of the agreement; or

To secure
against
liability as
surety.

(b) to secure the mortgagee against the endorsement of any bill of exchange or promissory note or other liability by him incurred for the mortgagor, such liability not extending for a longer time than one year from the date of the mortgage;

Affidavit of
bona fides.

the affidavit of the mortgagee shall state that the mortgage truly sets forth the agreement and truly states the extent and amount of the advances intended to be made or liability intended to be created by the agreement and covered by the mortgage, and that the mortgage is entered into in good faith and for the express purpose of securing the mortgagee repayment of his advances or against the liability intended to

be created, as the case may be, and not for the purpose of securing the goods and chattels mentioned therein against the creditors of the mortgagor nor to prevent such creditors from recovering any claims which they may have against the mortgagor. 1927, c. 41, s. 4.

6. If for any reason it is shown to be necessary or expedient the county judge may permit a copy verified by affidavit to be registered in lieu of the original mortgage. 1927, c. 41, s. 5.

When verified copy may be registered.

7. If the mortgage and affidavits are not registered as by this Act provided, the mortgage shall be absolutely null and void as against creditors of the mortgagor, and as against subsequent purchasers or mortgagees in good faith for valuable consideration. R.S.O. 1914, c. 135, s. 7.

Effect of non-registration.

8. Every sale of goods and chattels, not accompanied by an immediate delivery and followed by an actual and continued change of possession of the goods and chattels sold, shall be in writing, and such writing shall be a conveyance under the provisions of this Act; and such conveyance accompanied by an affidavit of an attesting witness thereto of the due execution of the conveyance, and an affidavit of the bargainee that the sale is *bona fide* and for good consideration, as set forth in the conveyance, and not for the purpose of holding or enabling the bargainee to hold the goods mentioned therein against the creditors of the bargainor, shall be registered, as hereinafter provided, otherwise the sale shall be absolutely null and void as against the creditors of the bargainor and as against subsequent purchasers or mortgagees in good faith. R.S.O. 1914, c. 135, s. 8.

Writing.

Registration.

9. A mortgage or conveyance shall not be invalidated by reason only of clerical errors or omissions therein or in the affidavits of execution and *bona fides* unless such errors or omissions are calculated to mislead or deceive or have the effect of misleading or deceiving. 1927, c. 41, s. 6, *part*.

When defects not to invalidate.

10. Where a mortgage or conveyance is not duly registered within the time prescribed by this Act, the judge of the county or district court may permit the same to be registered at a later date upon being satisfied by affidavit, or affidavits, registered that the failure to register arose from misadventure, ignorance or some other cause which constitutes a reasonable excuse and that the parties have acted and are acting in good faith, but in such case the mortgage or conveyance shall, as against creditors of the mortgagor, or as against subsequent purchasers or mortgagees in good faith for valuable consideration, be deemed to have been executed and to be effective only from the date of registration. 1927, c. 41, s. 6, *part*.

Registration after statutory period.

Where
Crown
mortgagee.

11. Where the Crown is mortgagee or bargainee, the provisions of this Act as to an affidavit of *bona fides* shall not apply. 1921, c. 50, s. 2.

When mort-
gage to take
effect.

12. Every such mortgage or conveyance shall operate and take effect upon, from and after the day and time of the execution thereof. R.S.O. 1914, c. 135, s. 9.

Manner of
describing
property in
mortgages,
etc.

13. Every mortgage and every conveyance or agreement required to be registered under this Act shall contain such sufficient and full description of the goods and chattels that the same may be thereby readily and easily known and distinguished. R.S.O. 1914, c. 135, s. 10.

Mortgages,
etc., of goods
not in
possession of
mortgagor or
intended for
future
delivery.

14. This Act shall extend to a mortgage or sale of goods and chattels which may not be the property of or in the possession, custody or control of the mortgagor or bargainor or any person on his behalf at the time of the making of the mortgage or sale, and notwithstanding that such goods or chattels may be intended to be delivered at some future time, or that the same may not at the time of the making of the mortgage or sale be actually procured or provided or fit or ready for delivery, or that some act may be required for the making or completing of such goods and chattels or rendering the same fit for delivery. R.S.O. 1914, c. 135, s. 11.

Who may
make affida-
vits of bona
fides and on
renewal of
mortgage.

15.—(1) Every affidavit of *bona fides* required by this Act and every affidavit required upon the renewal of a chattel mortgage may be made by one of two or more bargainees or mortgagees, or by his or their agent if aware of all the circumstances and properly authorized in writing to take the conveyance or to take or renew the mortgage, or, in the case provided for by section 5, to make the agreement and to take the mortgage.

In the case
of a cor-
poration.

(2) If the mortgage or conveyance is made to a corporation the affidavit may be made by the president, vice-president, manager, assistant manager, secretary or treasurer, or by any other officer or agent thereof authorized to do so by resolution of the directors.

Affidavits
made by
agents or
officers.

(3) Where the affidavit is made by the agent of the mortgagee or bargainee, or by an officer or agent of a corporation, it shall state that the deponent is aware of all the circumstances connected with the mortgage or conveyance and has personal knowledge of the facts deposed to. R.S.O. 1914, c. 135, s. 12.

Branch
managers,
etc., may
make affi-
davit of bona
fides or on
renewal.

(4) If the mortgage or conveyance is made to a corporation having branches, agencies or offices opened pursuant to statutory authority, the affidavit may be made by the manager, assistant manager or accountant of any such branch, agency or office without being authorized so to do by resolution of the directors and the affidavit shall state that the deponent is

aware of all the circumstances connected with the mortgage or conveyance and has personal knowledge of the facts deposed to. 1925, c. 35, s. 2.

16. The authority in writing referred to in the next preceding section, or a copy of such authority, shall be attached to and filed with the mortgage or conveyance. R.S.O. 1914, c. 135, s. 13. Agent's authority to be attached to mortgage.

17. Any affidavit by this Act required to be made by the mortgagee or by the bargainee may in the case of his death be made by any of his next of kin or by his executor or administrator, or if the mortgage has been assigned by his assignee. R.S.O. 1914, c. 135, s. 14. Affidavit of executor, administrator, next of kin, or assignee.

18. An authority to take a conveyance or to take or renew a mortgage may be a general one to take all or any conveyances to the bargainee, or to take and renew all or any mortgages to the mortgagee. R.S.O. 1914, c. 135, s. 15. General authority to take or renew mortgages.

CONTRACTS TO GIVE MORTGAGES, ETC.

19. Every covenant, promise or agreement to make, execute or give a mortgage of goods and chattels shall be in writing, and shall be deemed to be a mortgage within the meaning of this Act. R.S.O. 1914, c. 135, s. 16. Effect of contract to take or renew mortgage.

20. Every covenant, promise or agreement to make a sale of goods and chattels shall be in writing and shall be deemed to be a sale of goods and chattels within the meaning of this Act. R.S.O. 1914, c. 135, s. 17. Effect of contract to make a sale.

REGISTRATION.

21.—(1) Except in the case of the Provisional County of Haliburton the instruments mentioned in the preceding sections shall be registered in the office of the clerk of the county or district court of the county or district in which the property mortgaged or sold is at the time of the execution thereof. Where instruments to be registered.

(2) Where the property is situate in the Provisional County of Haliburton the instrument shall be registered in the office of the clerk of the first division court of the provisional county. Registration in Provisional County of Haliburton.

(3) In the case of a county the instrument shall be registered within five days from the execution thereof. Limitation of time for registration.

(4) In the case of the Provisional County of Haliburton and of a district the instrument shall be registered within ten days from the execution thereof. In Haliburton.

Filing and
endorsing.

(5) The clerk shall file the instrument and endorse thereon the time of receiving it. R.S.O. 1914, c. 135, s. 18.

Certificate of
registration.

(6) The clerk shall give to the person registering an instrument a certificate of its registration if so requested.

Computation
of time for
registration.

(7) Where there are more mortgagors or grantors than one the time shall be computed from the execution of the instrument by the last mortgagor or grantor. 1927, c. 41, s. 7.

Procedure
when mort-
gaged goods
are removed.

22. In the event of the permanent removal of the goods and chattels from the county, provisional county or district in which the goods and chattels were at the time of the execution of the mortgage to another county, provisional county or district before the payment and discharge of the mortgage, a copy of the mortgage and of the affidavits, documents, instruments and statements relating thereto, certified under the hand of the clerk in whose office it was registered, and under the seal of the court, shall be filed with the proper officer as mentioned in section 21, of the county, provisional county or district to which the goods and chattels are removed within two months from such removal, otherwise the mortgage shall be null and void as against creditors of the mortgagor and as against subsequent purchasers and mortgagees in good faith for valuable consideration. R.S.O. 1914, c. 135, s. 19.

Manner of
registration.

23. The clerk shall number every instrument or copy filed in his office, and shall enter in alphabetical order in a book to be provided by him the names of all the parties thereto, with the number indorsed thereon opposite to each name, and such entry shall be repeated alphabetically under the name of every party thereto. R.S.O. 1914, c. 135, s. 20.

RENEWAL OF MORTGAGES.

Require-
ments.

24.—(1) Except as provided in subsection 2 and subject to the provisions of section 28 every mortgage registered in pursuance of this Act shall cease to be valid, as against the creditors of the person making the same and as against subsequent purchasers and mortgagees in good faith for valuable consideration, after the expiration of one year from the day of the registration thereof unless, within thirty days next preceding the expiration of the said term of one year, a statement (Form 1), exhibiting the interest of the mortgagee, his executors, administrators or assigns in the mortgaged property, and showing the amount still due for principal and interest thereon, and all payments made on account thereof, is registered in the proper office, as mentioned in section 21 of the county, provisional county or district in which the mortgage was registered, with an affidavit of the mortgagee that the statement is true and that the mortgage has not been kept on foot for any fraudulent purpose.

Statement.

Affidavit.

(2) Where there has been a permanent removal of the goods and chattels, as mentioned in section 22, and a certified copy of the mortgage has been registered as required by that section the statement and affidavit shall be registered in the office in which such certified copy is registered, and the period of one year shall be reckoned from the date of the registration of such certified copy.

Case of permanent removal of goods.

(3) Where the two months mentioned in section 22 have not expired when the period of one year mentioned in subsection 1 expires, and a certified copy of the mortgage has not been registered as provided by section 22, the statement and affidavit may be registered in the office in which the mortgage was registered.

When statement and affidavit may be registered in the office in which the mortgage was registered.

(4) If any *bona fide* error or mistake is made in the statement, either by the omission to give any credit or by any miscalculation in the computation of interest or otherwise, the statement and the mortgage therein referred to shall not be invalidated if the mortgagee, his executors, administrators or assigns within two weeks after the discovery of the error or mistake, registers an amended statement and affidavit referring to the former statement and clearly pointing out the error or mistake therein and correcting the same.

Remedying error or mistake made in state.

(5) If before the registration of such amended statement and affidavit any creditor or purchaser or mortgagee in good faith for valuable consideration has made any *bona fide* advance of money or given any valuable consideration to the mortgagor, or has incurred any costs in proceedings taken on the faith of the amount due on the mortgage being as stated in the renewal statement and affidavit as first registered, the mortgage, as to the amount so advanced or the valuable consideration given or costs incurred by such creditor, purchaser or mortgagee, shall, as against such creditor, purchaser or mortgagee, stand good only for the amount mentioned in the renewal statement and affidavit first registered.

Advances made in good faith protected.

(6) The statement and affidavit shall be deemed one instrument and shall be registered and entered as provided by section 23.

Manner of registering.

(7) Another statement in accordance with the provisions of subsection 1, verified as required by that subsection, shall be registered in the proper office, according to section 21 or subsection 2 of this section, as the case may be, within thirty days next preceding the expiration of one year from the day of the registration of the statement required by subsection 1, otherwise such mortgage shall cease to be valid as against the creditors of the mortgagor, and as against subsequent purchasers and mortgagees in good faith for valuable consideration, and so on from year to year, that is to say, another verified statement shall be registered within thirty days next preceding the expiration of one year from the day of the regis-

Annual registration of renewals.

tration of the former statement, otherwise such mortgage shall cease to be valid as aforesaid.

By whom
affidavits on
renewals may
be made.

(8) If the affidavit is made by an assignee, or by any of his next of kin, or by his executor or administrator, the assignment or the several assignments through which he claims shall be registered with the statement and affidavit, unless the same have been already registered.

Assignment
for benefit
of creditors
excepted.
Rev. Stat.
c. 162.

(9) Subsection 8 shall not apply to an assignment for the benefit of creditors under *The Assignments and Preferences Act*, or any other Act of Ontario or of Canada relating to assignments for the benefit of creditors, if such assignment be referred to in the statement and notice thereof has been given in manner required by law. R.S.O. 1914, c. 135, s. 21.

Affidavit by
trustee in
bankruptcy.

(10) Where a mortgagee has become bankrupt the affidavit may be made by the trustee in bankruptcy who shall report to the court upon knowledge, information and belief. 1927, c. 41, s. 8.

Mortgages
where county
or district
boundaries
altered.

25. Where a new county or district is formed, or territory is added to a county or district, every mortgage which under the provisions of this Act would otherwise require to be renewed in the county or district of which the territory forming or added to the new county or district was part shall be renewed in the office of the proper officer of the county or district so formed or to which such territory is added, and upon such renewal a copy of the mortgage, certified under the hand of the officer in whose office it was registered and the seal of the court, shall be registered with the renewal statement and affidavit. R.S.O. 1914, c. 135, s. 22.

Crown not
affected.

26. Sections 24 and 25 shall not apply where the mortgage is made to the Crown. 1921, c. 50, s. 3.

SUBSEQUENT TAKING POSSESSION.

When
subsequent
possession not
to validate
mortgage or
sale other-
wise void.

27. A mortgage or sale declared by this Act to be void or which under the provisions of section 24 has ceased to be valid as against creditors and subsequent purchasers or mortgagees shall not by the subsequent taking of possession of the goods and chattels mortgaged or sold by the mortgagee or bargainee be thereby made valid as against persons who became creditors, purchasers, or mortgagees before such taking of possession. R.S.O. 1914, c. 135, s. 23.

MORTGAGES TO SECURE BONDS, ETC., OF CORPORATIONS.

Affidavits of
bona fides
where mort-
gage given by
company to
secure bonds
or debentures.

28.—(1) In the case of a mortgage of goods and chattels made by any incorporated company to a bondholder, or to a trustee, for the purpose of securing the bonds or debentures of such company it shall be sufficient if the affidavit of *bona fides* is to the effect that the mortgage was executed in good faith and for the express purpose of securing the payment of

the bonds or debentures referred to therein, and not for the purpose of protecting the goods and chattels mentioned therein against the creditors of the mortgagors, or of preventing the creditors of such mortgagors from obtaining payment of any claim against them.

(2) Where the head office of the company is not within Ontario the mortgage may be registered within thirty days instead of five days, as provided by section 21. Where head office not in Ontario.

(3) Any such mortgage may be renewed in the manner and with the effect provided by section 24 by the filing of a statement by the mortgagee or one of the mortgagees exhibiting the interest of the mortgagee or mortgagees in the property claimed by virtue of the mortgage, and showing the amount of the bond or debenture debt which the same was made to secure, and showing all payments on account thereof, which, to the best of the information and belief of the person making such statement, have been made, or of which he is aware or has been informed, together with an affidavit of the person making such statement that the statement is true to the best of his knowledge, information and belief, and that the mortgage has not been kept on foot for any fraudulent purpose, and such statement shall be filed instead of the statement required by section 24. R.S.O. 1914, c. 135, s. 24 (1-3). Renewal of mortgages.

(4) Where the mortgage is made as a security for bonds or debentures and the by-law authorizing the issue of the bonds or debentures as a security for which the mortgage was made, or a copy thereof certified under the hand of the president or vice-president and secretary of the company and verified by an affidavit thereto attached or endorsed thereon and having the corporate seal attached thereto, is registered with the mortgage it shall not be necessary to renew the mortgage, but the same shall in such case continue to be as valid as if it had been duly renewed as in this Act provided. R.S.O. 1914, c. 135, s. 24 (4); 1916, c. 24, s. 22. Renewal of mortgages given to secure debentures of companies.

(5) The next preceding subsection shall apply to every such mortgage made and registered after the 5th day of May, 1894. R.S.O. 1914, c. 135, s. 24 (5), *part*. Restriction of application of subsection 4.

29.—(1) In the case of a mortgage securing bonds made by an incorporated company on rolling stock owned by it it shall be sufficient for the purposes of this Act if the mortgage or a copy thereof and the affidavit in subsection 1 of the next preceding section referred to be filed in the office of the Provincial Secretary within the time limited by this Act for registering a mortgage to secure bonds or debentures of an incorporated company. Mortgage of rolling stock.

(2) The office of the Provincial Secretary shall be the place for filing the renewal statements of any such mortgage of rolling stock where renewal thereof is necessary under this Act. Where renewals to be filed.

Application
of
subsections 1
and 2.

(3) Subsections 1 and 2 shall apply to any such mortgage on rolling stock heretofore made if the same has been filed as therein provided. R.S.O. 1914, c. 135, s. 25.

Mortgage to
secure bonds
etc., on
leased roll-
ing stock.

30.—(1) In the case of a mortgage, hypothec or other instrument made by an incorporated company securing bonds, debentures, notes or other securities on any rolling stock which is subject to any lease, conditional sale or bailment to a railway company, the same or a copy thereof may be filed in the office of the Provincial Secretary within twenty-one days from the execution thereof, and if so filed shall be as valid as against creditors of such company and subsequent purchasers as if the same had been registered pursuant to the provisions of this Act.

Notice in
Gazette.

(2) Notice of the filing shall forthwith thereafter be given in the *Ontario Gazette*.

As to mort-
gages made
before 14th
April, 1908.

(3) In case any such mortgage, hypothec or other instrument made before the 14th day of April, 1908, or a copy thereof had been filed in the office of the Provincial Secretary within ninety days from that date the same shall be as valid as against creditors of such company and purchasers or mortgagees becoming such creditors, purchasers or mortgagees subsequent to that date as if it had been registered pursuant to the provisions of this Act. R.S.O. 1914, c. 135, s. 26.

PROOF OF REGISTRATION.

Evidence by
certified copy.

31. A copy of any instrument or document registered under this Act and of any endorsement thereon certified under the hand of the officer with whom the same is registered and under the seal of the court, or where the same is filed in the office of the Provincial Secretary under the hand of the Provincial Secretary or Assistant Provincial Secretary, shall be received as evidence by all courts that the instrument or document was received and registered or filed according to the endorsement thereon. R.S.O. 1914, c. 135, s. 27.

DISCHARGE OF MORTGAGES.

Certificates
of discharge
of chattel
mortgages.

32. A mortgage registered under this Act may be discharged by registering in the office in which the mortgage is registered a certificate (Form 2), signed by the mortgagee, his executors, administrators, or assigns. R.S.O. 1914, c. 135, s. 28.

Entering
certificates
of discharge.

33.—(1) The officer with whom the mortgage is registered upon receiving such certificate, proved by the affidavit of a subscribing witness, shall, at each place where the number of the mortgage has been entered, with the name of any of the parties thereto, in the book kept by him under section 23, or wherever otherwise in such book the mortgage has been

entered, write the words "Discharged by Certificate Number (*stating the number of the certificate*)," and to such entry the officer shall subscribe his name, and he shall also endorse the fact of the discharge upon the instrument discharged, and shall subscribe his name to the endorsement.

(2) Where a mortgage has been renewed under section 24 the endorsement or entries required by the next preceding subsection need only be made upon the statement and affidavit filed on the last renewal, and at the entries of the statement and affidavit in such book. Entries of renewal.

(3) A certificate of discharge by an assignee shall not be registered unless and until the assignment is registered. When to be registered.

(4) The assignment shall, upon proof by the affidavit of a subscribing witness, be registered, numbered and entered in such book in the same manner as a mortgage. R.S.O. 1914, c. 135, s. 29. Entry of assignment of mortgages.

INSPECTION OF BOOKS AND INSTRUMENTS.

34.—(1) Every person shall on payment of the proper fees have access to and be entitled to inspect the books containing records or entries of mortgages, conveyances or assignments registered. Inspection of books recording instruments.

(2) A person desiring such access or inspection shall not be required, as a condition to his right thereto, to furnish the names of the persons in respect of whom such access or inspection is sought. Idem.

(3) The clerk shall upon demand produce for inspection any such mortgage, conveyance, assignment or copy thereof registered in his office. R.S.O. 1914, c. 135, s. 31. Production of instruments.

STATISTICAL RETURNS.

35.—(1) Every officer with whom instruments are required to be registered under the provisions of this Act shall, on or before the 15th day of January in each year, transmit to the Minister of Agriculture a return which shall set out: Returns of chattel mortgages, etc., to be made by clerks.

(a) the number of undischarged mortgages on record in his office on the 1st day of January in the year next preceding that in which the return is made;

(b) the number of mortgages and renewals, the number of discharges, and the number of assignments for the benefit of creditors registered during the year following the said 1st day of January; and

(c) the number of undischarged mortgages on record in his office on the 31st day of December in said year.

Lapsed
instruments.

(2) The return shall not include instruments which have lapsed by reason of non-renewal.

What to be
shown in
returns.

(3) The occupations or callings of the mortgagors or assignors as stated in the instruments shall be classified and the return shall show the aggregate sums purporting to be secured by the mortgages in each class.

Considera-
tions of mort-
gages to be
classified.

(4) The return shall, where practicable, distinguish mortgages to secure endorsements or future advances from mortgages to secure existing debts or present advances. R.S.O. 1914, c. 135, s. 32.

FEES.

Fees.

36. For services under this Act except as provided by sections 38 to 41 the officers shall be entitled to the following fees:

- (a) For registering each instrument or copy or renewal statement, fifty cents;
- (b) For registering an assignment, twenty-five cents;
- (c) For registering a certificate of discharge, twenty-five cents; R.S.O. 1914, c. 135, s. 30 (*a-c*).
- (d) For a general search, fifty cents; for a search as to any particular person, ten cents; 1927, c. 41, s. 9 (1).
- (e) For production and inspection of any instrument or document, ten cents;
- (f) For copies of any instrument or document and certifying the same, ten cents for every hundred words.
- (g) For extracts, whether made by the person making the search or by the officer, ten cents for every hundred words. R.S.O. 1914, c. 135, s. 30 (*e-g*).
- (h) For a certificate of registration of any instrument given at the time of registration, twenty-five cents. 1927, c. 41, s. 9 (2).

MORTGAGES AND DEBENTURES OF INCORPORATED COMPANIES.

Application
of section.

37.—(1) The provisions of this Act, other than this section and sections 38 to 41 and the interpretation section, shall not apply to any mortgage made by an incorporated company after the 1st day of July, 1927, for the purpose of securing any issue of debentures.

Registration
of mortgage
to secure
bonds.

(2) Any such mortgage made by an incorporated company in so far as it creates any such mortgage or charge upon the personal property of the company in Ontario shall in so far

as it affects goods and chattels in Ontario be void as against the creditors of the company or any subsequent purchaser or mortgagee in good faith for valuable consideration unless a duplicate original thereof with an affidavit showing the date of execution is filed with the Provincial Secretary within ten days after its execution.

(3) The mortgagee shall within the same time file with the Provincial Secretary a statement under oath showing the total amount of debentures authorized, or if the amount is not limited, showing such to be the case, and the amount of the debentures, if any, theretofore actually certified and delivered. Proof to be filed on registration.

(4) The mortgagee shall within the same time file with the Provincial Secretary a copy of the by-laws and resolutions passed by the directors or shareholders authorizing the mortgage and verified by an affidavit or certified under the seal of the company and in the event of any further by-laws or resolutions being passed by the directors or shareholders authorizing further debentures under such mortgage the company shall, within ten days after the passage thereof, file with the Provincial Secretary a copy of such by-laws or resolutions verified as aforesaid. By-laws and resolutions relating to issue.

(5) In case the terms of any mortgage are modified or altered by any supplementary agreement such supplementary agreement, duly verified, shall be filed by the mortgagee within ten days of its execution. Supplementary agreement modifying terms of issue.

(6) There shall be filed such further statement giving such further and other information as may be required by regulations made by the Lieutenant-Governor in Council. Further material to be filed.

(7) The company shall also give to any person requiring such information a statement of the amount of debentures issued under such mortgage and then outstanding and of any interest in arrear. Information to be furnished by company.

(8) Any mortgagee or company, as the case may be, failing to comply with any of the requirements of subsections 3, 4, 5, 6 and 7 of this section shall be liable to a penalty of not less than \$50 nor more than \$1,000 for every offence, but no prosecution shall be had nor proceedings taken to recover such penalty without the permission of the Attorney-General. Failure to comply with the provisions of said subsections 3, 4, 5, 6 or 7 shall not affect the validity of the mortgage or of the debentures issued or the rights of the holder or holders thereof. Penalty.

(9) A judge of the Supreme Court on being satisfied that the omission to register a mortgage within the time required under subsection 2 or the statement, copies of by-laws and resolutions, affidavit and debenture form under section 40 was accidental or due to inadvertence or some other sufficient Relief of court.

cause and is not of a nature to prejudice the position of creditors of the company or subsequent purchasers or mortgagees or that on other grounds it is just and equitable to grant such relief may on the application of the company or any person interested and on such terms as he may deem just and expedient extend the time for registration of the mortgage or the filing of such other documents and when there has been any failure on the part of the mortgagee, or company, as the case may be, to comply with the requirements of subsections 3, 4, 5, 6 or 7 of this section or section 40, he may permit the default to be rectified upon such terms as he may deem just and expedient.

Procedure on mortgagees taking possession or appointment of receiver, etc.

(10) Where a mortgagee takes possession under his mortgage, or where a receiver or manager is appointed, either by virtue of the provisions of the mortgage, or by an order of the court, the mortgagee so taking possession, or the receiver or manager so appointed shall within seven days after possession has been taken, or the appointment has been made, file a statement showing the taking of possession or the appointment of the receiver or manager, and the mode of his appointment, with the Provincial Secretary, and in default of so doing the mortgagee, or receiver or manager shall be liable to a penalty not exceeding \$500, but no proceeding shall be had or taken to recover such penalty without the permission of the Attorney-General. 1927, c. 41, s. 10, *part*.

Records of mortgages.

38.—(1) The Provincial Secretary shall keep two records of mortgages, and other documents required to be filed under this Act in one of which they shall be entered in the order received with the date of filing and in the other they shall be recorded against the name of the mortgagor in alphabetical arrangement.

Priority.

(2) Mortgages and debentures to be registered under the provisions of this section shall operate and take effect upon, from and after the day and time of the execution thereof but subject to the express provisions contained in any such mortgage shall have priority among themselves according to the order of registration in the first of such records.

Right to search record.

(3) Any person may search the said records and documents filed. 1927, c. 41, s. 10, *part*.

Fees.

39. The fees to be paid for recording a mortgage and other papers to be filed therewith shall be\$10 00
 And upon issue of future debentures..... 5 00
 For registration of notice of appointment..... 5 00
 For the search of any particular mortgage and the papers filed therewith, or for a search as to any particular company..... 1 00
 For a general search..... 2 00
 For copies of any papers required ten cents per folio, and fifty cents for a certificate. 1927, c. 41, s. 10, *part*.

40.—(1) Where a debenture or a series of debentures is authorized by an incorporated company, containing any charge or floating charge upon any of the assets of the company and where apart from such debenture or debentures there is no mortgage capable of being registered under the provisions of preceding sections, it shall be sufficient if there is filed with the Provincial Secretary, within ten days after the issue of the debentures or any debenture of the series, a statement under oath by the president, vice-president, secretary or treasurer of the company showing the amount of the debentures or series of debentures authorized to be issued and the amount thereof, if any, previously issued and copies of all by-laws and resolutions passed by the directors or shareholders authorizing the issue of the debentures or series of debentures, certified under seal of the company or verified by affidavit together with the form of the debenture so authorized.

Registration of debentures which contain charge.

(2) Where more than one issue is made of such debentures together constituting one series there shall be filed with the Provincial Secretary within ten days after such issue particulars of the date and amount of each issue.

Where more than one issue of same series.

(3) Failure to file the form of debenture and the statement under oath as prescribed by subsection 1 shall so far as the debenture is a charge upon goods and chattels of the company in Ontario render it void as against any creditors of the company or any subsequent purchaser or mortgagee in good faith but any defect in compliance with the other requirements of the two preceding subsections shall not affect the validity of the debentures issued nor the rights of the holder or holders thereof, but every officer and director of the company failing to comply with such subsections shall be liable to a penalty of not less than \$50 nor more than \$1,000 for every offence, but no prosecution shall be had or proceedings taken to recover such penalty without the permission of the Attorney-General.

Effect of failure to register debenture.

(4) The fee to be paid upon registering a debenture or series of debentures under subsections 1 and 2 shall be \$10.

Fees and registration.

41.—(1) The Provincial Secretary shall register any memorandum of satisfaction and discharge executed by the mortgagee or by any debenture holder, on the records kept by him, but shall not have any obligation to ascertain the validity or effect thereof, nor shall he be bound to ascertain that the person executing the memorandum was the holder of the debenture or entitled to execute the discharge.

Registration of discharge of bond, mortgage or charge.

(2) When a mortgagee having taken possession relinquishes possession or when a receiver is discharged the mortgagee or receiver shall file a statement of that fact with the Provincial Secretary.

Filing statement of relinquishment of possession.

(3) A fee of \$5 shall be paid on the registration of any memorandum of satisfaction or discharge or certificate under this section.

Fee and registration of discharge.

1927, c. 41, s. 10, *part*.

FORM 1.

(Section 24.)

RENEWAL STATEMENT.

Statement exhibiting the interest of _____ in the property mentioned in the mortgage dated the _____ day of _____, 19____, made between _____ of _____ of the one part, and _____ of _____ of the other part and registered in the office of the Clerk of the _____ Court of the _____ of _____, on the _____ day of _____ 19____, and of the amount due for principal and interest thereon, and of all payments made on account thereof.

The said _____ is still the mortgagee of the said property, and has not assigned the said mortgage (or the said _____ is the assignee of the said mortgage by virtue of an assignment thereof from the said _____ to him, dated the _____ day of _____ 19____), (or as the case may be).

No payments have been made on account of the said mortgage (or the following payments, and no other, have been made on account of the said mortgage:

_____ 19____, January 1, Cash received.....\$100.00)

The amount still due for principal and interest on the said mortgage is the sum of \$ _____, made up as follows: (here give the items).

A. B.

(Signature of Mortgagee or Assignee.)

County (or District) of _____ }
To wit, _____ }

I, _____ of _____ of the _____ the mortgagee named in the mortgage mentioned in the foregoing (or annexed) statement (or assignee of the mortgagee named in the mortgage mentioned in the foregoing [or annexed] statement) (as the case may be), make oath and say:

1. That the foregoing (or annexed) statement is true.
2. That the mortgage mentioned in the said statement has not been kept on foot for any fraudulent purpose.

A. B.

Sworn before me at the _____ of _____ in the _____ of _____, this _____ day of _____, 19____. }
E. F., _____ }
A Commissioner, etc. }

FORM 2.

DISCHARGE OF MORTGAGE.

To the Clerk of the Court of the of

I, of do certify that has satisfied all money due, or to grow due on a certain mortgage made by to , which mortgage bears date the day of , 19 , and was registered (or in case the mortgage has been renewed was last renewed), in the office of the Clerk of the Court of the of , on the day of , 19 , as No. (here mention the date of registration of each assignment thereof, and the names of the parties, or mention that such mortgage has not been assigned, as the fact may be); and that I am the person entitled by law to receive the money, and that such mortgage is therefore discharged.

Witness my hand, this day of , 19 .

Witness

A. B.,

C. D. (Signature of Mortgagee or Assignee.)

R.S.O. 1914, c. 135, Form 2

CHAPTER 165.

The Conditional Sales Act.

Interpreta-
tion.

"Goods."

1. In this Act,

"Goods" shall include wares and merchandise. R.S.O. 1914, c. 136, s. 2.

Invalidity of
conditional
sale
accompanied
by delivery
against
subsequent
purchaser or
mortgagee
unless

2.—(1) Where possession of goods is delivered to a purchaser, or a proposed purchaser or a hirer of them, in pursuance of a contract which provides that the ownership is to remain in the seller or lender for hire until payment of the purchase or consideration money or part of it, as against a subsequent purchaser or mortgagee claiming from or under the purchaser, proposed purchaser or hirer, without notice in good faith and for valuable consideration, such provision shall be invalid, and such purchaser, or proposed purchaser or hirer, shall be deemed the owner of the goods, unless

the contract
is in writing

(a) the contract is evidenced by a writing signed by the purchaser, proposed purchaser or hirer or his agent, stating the terms and conditions of the sale or hiring and describing the goods sold or lent for hire; and,

and a copy
filed in office
of clerk of
county or
district
court.

(b) within ten days after the execution of the contract a true copy of it is filed in the office of the clerk of the county or district court of the county or district in which the purchaser, proposed purchaser or hirer resided at the time of the sale or hiring.

Hire
receipts.

(2) Subsection 1 shall apply to the case of a hire receipt where the hirer is given an option to purchase. R.S.O. 1914, c. 136, s. 3 (1,2).

Goods deliv-
ered for the
purpose of
resale.

(3) Where the delivery is made to any person for the purpose of resale by him in the course of business such provision shall also, as against his creditors, be invalid and he shall be deemed the owner of the goods unless the provisions of this Act have been complied with. R.S.O. 1914, c. 136, s. 3 (3); 1927, c. 42, s. 2 (1).

Ownership
on resale.

(4) Where such person resells the goods in the ordinary course of his business the property in and ownership of such goods shall pass to the purchaser notwithstanding that the provisions of this Act have been complied with. R.S.O. 1914, c. 136, s. 3 (4); 1927, c. 42, s. 2 (2).

Application
of cl. b of
subs. 1.
to musical
instruments,
etc.

(5) Clause b of subsection 1 shall not apply to a contract respecting manufactured goods, including pianos, organs or

other musical instruments which, at the time possession is delivered, have the name and address of the seller or lender painted, printed, stamped or engraved thereon or plainly attached thereto, nor to a contract respecting household furniture other than pianos, organs or other musical instruments.

(6) An error or inaccuracy in the name or address of the seller or lender which does not mislead shall not prevent the application of subsection 5. Error in name or description.

(7) This section shall not apply to a contract for the sale by an incorporated company to a railway company of rolling stock if the contract or a copy of it is filed in the office of the Provincial Secretary within ten days from its execution. Rolling stock sold to railway company.
R.S.O. 1914, c. 136, s. 3 (5-7).

3. The seller or lender shall deliver a copy of the contract to the purchaser or hirer within twenty days after the execution thereof, and if, after request, he neglects or refuses to do so the judge of the county or district court of the county or district in which the purchaser or hirer resided when the contract was made may, on summary application, make an order for the delivery of such copy. Copy of contract to be given to purchaser or hirer. R.S.O. 1914, c. 136, s. 4.

4. The clerk of the county or district court shall make a record of every contract of which a copy is filed in his office under this Act, in an index book to be kept for that purpose and shall be entitled to the following fees for services under this Act: Index and fees.

(a) For filing each copy of a contract and making such record,—

- (i) if the amount of the contract is less than \$1,000 \$.50
- (ii) if the amount of the contract is \$1,000 or more 1.00
- (b) For filing each discharge or assignment and making a record thereof..... 1.00
- (c) For a general search25
- (d) For a search as to any particular person..... .10
- (e) For the production or inspection of any copy or document filed..... .10
- (f) For copies of, or extracts from any copy or document filed, whether made by the person making the search, or by the clerk, per hundred words10
- (g) For a certificate of the filing of or identifying any copy or document filed, giving time, date and number of filing, when required, or any other proper certificate not otherwise provided for50
- (h) For every necessary letter25

Immaterial errors.

5. An error of a clerical nature or in an immaterial or non-essential part of the copy of the contract which does not mislead shall not invalidate the filing or destroy the effect of it. R.S.O. 1914, c. 136, s. 6.

Seller's or lender's duty to give particulars of claim.

6.—(1) The seller or lender shall, within five days after the receipt of a request in writing from any proposed purchaser of any goods to which this Act applies, or from any other person interested, furnish particulars of the amount remaining due to him and the terms of payment of it, and in default he shall incur a penalty not exceeding \$50, recoverable under *The Summary Convictions Act*.

Rev. Stat. c. 121.

How particulars to be given.

(2) If the request is by letter the person making the request shall give a name and post office address to which a reply may be sent, and it shall be sufficient if the information is given by registered letter deposited in the post office within the prescribed time addressed to the person inquiring at his proper post office address, or, where the name and address is given by him, by the name and at the post office address so given. R.S.O. 1914, c. 136, s. 7.

Seller's or lender's duty after re-taking.

7.—(1) Where the seller or lender retakes possession of the goods for breach of condition he shall retain them for twenty days, and the purchaser or hirer or his successor in interest may redeem the same within that period on payment of the amount then in arrear, together with interest and the actual costs and expenses of taking and keeping possession.

Notice of re-selling.

(2) Where the purchase price of the goods exceeds \$30, and the seller or lender intends to look to the purchaser or hirer for any deficiency on a resale of the goods, they shall not be resold until after notice in writing of the intended sale has been given to the purchaser or hirer or his successor in interest.

Service of notice.

(3) The notice shall be served personally upon or left at the residence or last known place of abode in Ontario of the purchaser or hirer or his successor in interest at least five days before the sale, or may be sent by registered post at least seven days before the sale addressed to the purchaser or hirer or his successor in interest at his last known post office address.

Time for giving notice.

(4) The notice may be given during the twenty days mentioned in subsection 1.

Application of this section.

(5) This section shall apply notwithstanding any agreement to the contrary. R.S.O. 1914, c. 136, s. 8.

Goods affixed to realty subject to rights of seller or lender.

8. Where the goods other than building material have been affixed to realty they shall remain subject to the rights of the seller or lender as fully as they were before being so affixed, but the owner of such realty or any purchaser or any mortgagee or other encumbrancer thereof shall have the right as against the seller or lender or other person claiming through

or under him to retain the goods upon payment of the amount owing on them. R.S.O. 1914, c. 136, s. 9; 1927, c. 42, s. 4.

9. Where the goods are in or upon premises with respect to which rent is in arrears, the landlord or other person exercising the right of distress, shall have the right to distrain the goods upon payment to the seller or lender or other person claiming, through or under him of the amount owing thereon, and the landlord may add the amount so paid to his claim for the rent. 1916, c. 24, s. 23.

Right of
landlord
distraining
to pay off
vendor's
lien.

10. When a contract has been made out of Ontario with reference to goods not then within Ontario which if made within Ontario and with reference to goods within Ontario would come within the provisions of this Act, or where under the law governing the contract the vendor has the right of revendication or to resume possession of the goods notwithstanding the possession of the purchaser upon default in payment of the price or the insolvency of the purchaser, and the goods are brought into Ontario, the purchaser shall be deemed to be the owner of the goods, unless the agreement or a caution under oath stating the nature of the agreement and of the right claimed, is filed in the same manner as a conditional sale agreement is required to be filed within thirty days after the goods are brought within Ontario. 1927, c. 42, s. 5.

Contract
made out of
Ontario and
goods subse-
quently
brought into
Ontario.

11.—(1) A hire receipt or conditional sale contract may be discharged by filing in the office of the clerk of the county or district court in which a copy of such hire receipt or contract has been filed, a certificate that all moneys due thereunder have been satisfied, or to the like effect, signed by the seller or lender and proved by affidavit of a subscribing witness and the clerk of such court shall, upon receiving such certificate, write the words "See discharge number (*stating the number of the certificate*)" opposite such place where the number of the hire receipt or contract has been entered in the index book kept for that purpose and he shall also endorse a similar memorandum upon the instrument discharged.

Discharge
of condition-
al sale
contract.

(2) The discharge may be in the following form:

Form of
discharge.

I certify that A. B. has paid all money payable to me under conditional sale agreement dated the day of 19 , signed by him and filed on the day of 19 , as number

1927, c. 42, s. 6.

CHAPTER 166.

The Assignment of Book Debts Act.

Interpreta-
tion.

"Assign-
ment."

"Good con-
sideration."

Assignment
of book
debts, when
to be void.

1. In this Act,—

(a) "Assignment" shall include save as herein provided every assignment by way of security and every mortgage or other charge upon book debts or accounts;

(b) "Good consideration" shall include a past, present or future advance of money. 1923, c. 29, s. 2.

2. Every assignment save as herein provided made by any person engaged in any trade or business, of his existing or future book debts or accounts or any class or part thereof, shall be absolutely null and void as against the creditors of the assignor and as against subsequent purchasers or mortgagees of such debts or accounts or any part thereof in good faith for valuable consideration, unless such assignment,—

(a) is in writing;

(b) is accompanied by an affidavit of the attesting witness thereto of the due execution thereof and a further affidavit of the assignee or one of the several assignees or the agent of the assignee or assignees that the assignment is *bona fide* and for good consideration, and not for the purpose of holding, or enabling the assignee or assignees to hold the said debts or accounts against the creditors of the assignor;

(c) together with the affidavits, is registered within twenty-one days of the execution thereof as hereinafter provided. 1923, c. 29, s. 3; 1927, c. 43, s. 2.

Manner of
registering.

Rev. Stat.
c. 164.

3.—(1) An assignment shall be registered if contained in a mortgage or debenture made by an incorporated company by filing the same with the Provincial Secretary as required by *The Bills of Sale and Chattel Mortgage Act*, and any other assignment shall be registered in the office of the clerk of the county or district court of the county or district in which the person making the assignment resides at the time of the execution thereof, or where the assignor is a company, in the office of the clerk of the county or district court of the county

or district in which the head office of the company is situate, or in the case of a company having its head office out of Ontario, in the office of the clerk of the county or district court of some one of the counties or districts within which the company has a branch or carries on business within Ontario. 1927, c. 43, s. 4.

(2) An assignment registered under this Act may be discharged by registering in the office in which the assignment is registered a certificate that the assignment is discharged or to the like effect, signed by the assignee and proved by the affidavit of a subscribing witness.

(3) For services under this Act, the officers shall be entitled to the following fees: Fees of officers.

- (a) For registering an assignment, 25 cents;
- (b) For registering a certificate of discharge, 25 cents;
- (c) For a general search, 25 cents. 1925, c. 37, s. 2.

4. This Act shall not apply to,—

- (a) any assignment of book debts due at the date of the assignment from specified debtors;
- (b) any assignment of debts growing due under specified contracts;
- (c) any assignment of book debts included in a transfer of a business made *bona fide* and for value;
- (d) any authorized assignment under *The Bankruptcy Act*. 1927, c. 43, s. 3.

Exception as to application of Act.

1919, c. 36 (Dom).

CHAPTER 167.

The Bulk Sales Act.

Interpreta-
tion.

1. In this Act,—

“Creditor.”

- (a) “Creditor” shall mean and include a person to whom the owner of any stock as defined by the Act is indebted, whether the debt is due and owing or not yet payable, and shall include any surety and the endorser of any promissory note or bill of exchange who would upon payment by him of the debt, promissory note or bill of exchange in respect of which such suretyship was entered into or such endorsement given, become a creditor of such owner;

“Judge.”

- (b) “Judge” shall mean a judge of the county or district court of the county or district in which the owner’s stock-in-trade is located at the time of the sale or intended sale thereof;

“Stock.”

- (c) “Stock” shall mean,—

(i) stock of goods, wares, merchandise and chattels, ordinarily the subject of trade and commerce;

(ii) the goods, wares, merchandise or chattels in which any person trades, or which he produces or which are outputs of, or with which he carries on any business, trade or occupation; 1917, c. 33, s. 2 (a-c).

“Trustee.”

- (d) “Trustee” shall mean any person appointed by the vendor to act as trustee and who has lodged a bond to the judge marked as satisfactory by the judge, by way of security in respect to his trusteeship with the clerk of the county court of the county or district in which the stock is located at the time of the sale or intended sale thereof, or any person appointed by the vendor with the consent in writing of his creditors holding claims of not less than fifty per centum in value of the amount of such claims as shown by the statement (Schedule A) or shall mean such person as shall, on the summary application of any person interested, be appointed as trustee by the senior judge of the county court of the county in which the vendor resides; 1917, c. 33, s. 2 (d); 1927, c. 44, s. 2.

- (e) "Vendor" shall mean and include each and every "Vendor." person, firm or corporation owning or claiming to own the stock or any individual share or interest therein. 1917, c. 33, s. 2 (e).

2. It shall be the duty of every person who shall bargain for, buy or purchase any stock in bulk, for cash or on credit, before closing the purchase of the same and before paying the vendor any part of the purchase price (save as hereinafter provided), or giving any promissory note or notes or any security for the said purchase price to demand and receive from such vendor, and it shall be the duty of each vendor of such goods to furnish a written statement verified by statutory declaration of the vendor or his duly authorized agent, or if the vendor is a corporation, by the declaration of the president, vice-president, secretary-treasurer or manager of such corporation, which statement is to contain the names and addresses of all the creditors of the said vendor, together with the amounts of the indebtedness or liability due and payable by said vendor to each of said creditors, which said statement may be in the form set forth in Schedule A hereto; Provided, however, that it shall be competent for a purchaser of any stock to pay to the vendor a sum not exceeding \$50 on account of the purchase price for the purpose of constituting a binding agreement for the purchase of such stock, before obtaining such statement as aforesaid. 1917, c. 33, s. 3.

3. Whenever any person shall bargain for or purchase any stock in bulk, for cash or on credit, and shall pay any part of the purchase price or execute or deliver to the vendor or to his order, or to any person for his use, any promissory note or other document for or on account of the purchase price of said goods, or any part thereof, without first having demanded and obtained from the vendor or from his agent, a statutory declaration purporting to be such as is provided for in the last preceding section, then such sale shall be deemed to be fraudulent and shall be void as against the creditors of the vendor, unless all the creditors of the vendor are paid in full out of the proceeds of such sale. 1917, c. 33, s. 4.

4. Any such purchaser, upon obtaining such statutory declaration, shall either obtain written waiver from the creditors of the vendor hereinafter referred to or shall pay the whole of his purchase money or deliver his promissory note or notes or other documents securing the same into the hands of a trustee for distribution *pro rata* among the creditors of the said vendor, and subject to any preferences provided for by law or by previous contract, such distribution shall be made in like manner as moneys are distributed by an assignee under *The Assignments and Preferences Act*, and in making such distribution all creditors' claims shall be proved in like man-

Purchaser to procure written statement as to creditors of vendor.

Sale without purchaser procuring statement.

Waiver by creditors or application of purchase money to debts of vendor.

Rev. Stat. c. 162.

ner, shall be subject to the like contestation and entitled to the like priorities as in the case of a distribution under the said Act, and the creditors, trustee and debtor shall in all respects have the same rights, liabilities and powers as the creditors, assignee and debtor have under the said Act.

Limitation
of fees of
trustees.

(a) The fee of any such trustee shall not exceed three per centum of the total proceeds of such sale which come to his hands, and shall, together with any disbursements made by him, be paid by being deducted out of the moneys to be received by the said creditors, and shall in no event be charged to the debtor.

No prefer-
ence for
creditors.

(b) From and after the furnishing of the statement and declaration provided for by this Act, no preference or priority shall be obtainable by any creditor by attachment, garnishee proceedings, contract or otherwise. 1917, c. 33, s. 5.

Sale void if
waiver not
procured or
purchase
money not
applied as
required by
Act.

5. If such purchaser, upon receiving such statutory declaration, shall fail to observe the requirements of the last preceding section without obtaining the written waiver from creditors hereinafter referred to, then such sale shall be deemed to be fraudulent, and shall be void as against the creditors of the vendor, unless all creditors of the vendor are paid in full out of the proceeds of such sale. 1917, c. 33, s. 6.

What to be
deemed a
sale in
bulk.

6. Any sale or transfer of stock, or part thereof, out of the usual course of business or trade of the vendor, or whenever substantially the entire stock of the vendor is sold or conveyed, or whenever an interest in the business or trade of the vendor is sold or conveyed, such sale, transfer or conveyance shall be deemed "a sale in bulk" within the meaning of this Act; provided, however, that if the vendor produces and delivers to the vendee a written waiver of the provisions of this Act from his creditors having claims of \$50 and over, representing sixty per centum in number and value of the claims of \$50 and over as shown by the said statutory declaration, then the provisions of this Act shall not apply. 1917, c. 33, s. 7.

Proviso.

Sales under
judicial
process not
affected.

7. Nothing in this Act contained shall apply to or affect any sale by executors, administrators, liquidators, receivers, assignees for the benefit of creditors or any public official acting under judicial process. 1917, c. 33, s. 8.

Limitation
of action
to set
aside sale.

8. No action shall be brought or proceedings had or taken to set aside or have declared void any sale in bulk for failure to comply with the provisions of this Act, unless such action is brought within sixty days from the date of such sale or within sixty days from the date when the creditor attacking such sale first received notice thereof. 1917, c. 33, s. 9.

9. Upon the application of any person interested, if the vendor has not appointed a trustee, the senior judge of the county court of the county in which the vendor resides, shall by order appoint a trustee, and the judge shall be entitled to a fee of \$1 on every such order. 1917, c. 33, s. 10.

Appoint-
ment of
trustee by
county
judge.

10. The bond given by any trustee may be delivered up to be cancelled by the direction of the judge. 1927, c. 44, s. 3.

Cancellation
of bond.

SCHEDULE A.

STATEMENT SHOWING NAMES AND ADDRESSES OF ALL CREDITORS OF

Name of Creditors.	Post Office Add.	Nature of Indebtedness.	Amount.	When Due.
--------------------	------------------	-------------------------	---------	-----------

I, _____ of _____ in the Province of Ontario, do solemnly declare that the above is, to the best of my knowledge and belief, a true and correct statement of the names and addresses of all _____ creditors and shows correctly the amount of indebtedness or liability due, owing, payable or accruing due, or to become due and payable by _____ to each of the said creditors. (If the declaration is made by an agent, add: I am the duly authorized agent of the vendor and have a personal knowledge of the matter herein declared to.)

Or if the vendor is a corporation:—

I, _____ of _____ in the Province of Ontario, do solemnly declare that the above is, to the best of my knowledge and belief, a true and correct statement of the names and addresses of all the creditors of the _____ Company, and shows correctly the amount of the indebtedness or liability due, owing, payable or accruing due, or to become due and payable by such Company to each of the said creditors, and that I am the _____ of the said Company, and have a personal knowledge of the matter herein declared to.

And I make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of *The Canada Evidence Act*.

Declared before me at the _____

of _____
in the Province of Ontario,
this _____ day of _____
A.D. 19 _____

A Commissioner.

1917, c. 33, Schedule A.

CHAPTER 168.

The Factors Act.

Interpreta-
tion. Imp. Act
52-53 V.
c. 45, s. 1.

"Document
of title."
Rev. Stat.
c. 161.

"Goods."

"Mercantile
agent."

"Pledge."

Possession.

Powers of
agent as to
disposition of
goods.
Imp. Act,
s. 2.

1.—(1) In this Act,

(a) "Document of title" shall include any bill of lading and warehouse receipt, as defined by *The Mercantile Law Amendment Act*, any warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or delivery, the possessor of the document to transfer or receive goods thereby represented;

(b) "Goods" shall include wares and merchandise;

(c) "Mercantile agent" shall mean a mercantile agent having, in the customary course of his business as such agent, authority either to sell goods or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods;

(d) "Pledge" shall include any contract pledging or giving a lien or security on goods, whether in consideration of an original advance or of any further or continuing advance or of any pecuniary liability.

(2) A person shall be deemed to be in possession of goods or of the documents of title to goods where the goods or documents are in his actual custody or are held by any other person subject to his control or for him or on his behalf. R.S.O. 1914, c. 137, s. 2.

2.—(1) Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods any sale, pledge or other disposition of the goods made by him, when acting in the ordinary course of business of a mercantile agent, shall, subject to the provisions of this Act, be as valid as if he were expressly authorized by the owner of the goods to make the same; provided that the person taking under the disposition acts in good faith and has not at the time thereof notice that the person making the disposition has not authority to make the same.

(2) Where a mercantile agent has, with the consent of the owner, been in possession of goods or of documents of title to goods, any sale, pledge or other disposition which would have been valid if the consent had continued, shall be valid notwithstanding the determination of the consent; provided that the person taking under the disposition acts in good faith and has not at the time thereof notice that the consent has been determined. Revocation of consent.

(3) Where a mercantile agent has obtained possession of any documents of title to goods by reason of his being or having been, with the consent of the owner, in possession of the goods represented thereby, or of any other documents of title to the goods, his possession of the first mentioned documents shall, for the purposes of this Act, be deemed to be with the consent of the owner. Derivative documents.

(4) For the purposes of this Act the consent of the owner shall be presumed in the absence of evidence to the contrary. Presumption.
R.S.O. 1914, c. 137, s. 3.

3. A pledge by a mercantile agent of the documents of title to goods shall be deemed to be a pledge of the goods. Effect of pledge of documents of title.
R.S.O. 1914, c. 137, s. 4. Idem, s. 3.

4. Where a mercantile agent pledges goods as security for a debt due from or liability incurred by the pledgor to the pledgee before the time of the pledge the pledgee shall acquire no further right to the goods than could have been enforced by the pledgor at the time of the pledge. Pledge for antecedent debt.
R.S.O. 1914, c. 137, s. 5. Idem, s. 4.

5. The consideration necessary for the validity of a sale, pledge or other disposition of goods by a mercantile agent, in pursuance of this Act, may be either a payment in cash or the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security or any other valuable consideration; but where goods are pledged by a mercantile agent in consideration of the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security or of other valuable consideration, the pledgee shall acquire no right or interest in the goods so pledged in excess of the value of the goods, document, security or other valuable consideration when so delivered or transferred in exchange. What consideration necessary.
R.S.O. 1914, c. 137, s. 6. Rights acquired by exchange of goods or documents. Idem, s. 5.

6. For the purposes of this Act an agreement made with a mercantile agent through a clerk or other person authorized in the ordinary course of business to make contracts of sale or pledge on his behalf shall be deemed to be an agreement with the agent. Agreements through clerks, etc.
R.S.O. 1914, c. 137, s. 7. Idem, s. 6.

7.—(1) Where the owner of the goods has given possession of the goods to another person for the purpose of consignment or sale, or has shipped the goods in the name of another Rights of consignee making advances in good faith.

person, and the consignee of the goods has not had notice that such person is not the owner of the goods, the consignee shall, in respect of advances made in good faith to or for the use of such person, have the same lien on the goods as if such person were the owner of the goods, and may transfer any such lien to another person.

Sale etc., by
mercantile
agent.
Idem, s. 7.

(2) Nothing in this section shall limit or affect the validity of any sale, pledge, or disposition by a mercantile agent. R.S.O. 1914, c. 137, s. 8.

Mode of
transferring
documents.
Imp. Act, 52
and 53 V., c.
45, s. 11.

8. For the purposes of this Act the transfer of a document of title may be by endorsement, or where the document is by custom or by its express terms transferable by delivery, or makes the goods deliverable to the bearer, then by delivery. R.S.O. 1914, c. 137, s. 12.

Liability of
agent.
Idem, s. 12.

9.—(1) Nothing in this Act shall authorize an agent to exceed or depart from his authority as between himself and his principal, or exempt him from any liability for so doing.

Saving of
rights of
owner to
recover
possession.

(2) Nothing in this Act shall prevent the owner of goods from recovering them from his agent at any time before the sale or pledge thereof, or shall prevent the owner of goods pledged by an agent from having the right to redeem the goods at any time before the sale thereof on satisfying the claim for which the goods were pledged, and paying to the agent, if by him required, any money in respect of which the agent would by law be entitled to retain the goods or the documents of title thereto, or any of them, by way of lien as against the owner, or from recovering from any person with whom the goods have been pledged any balance of money remaining in his hands as the produce of the sale of the goods after deducting the amount of his lien.

Or to
recover
balance of
money due.

Or the
price from
buyer.

(3) Nothing in this Act shall prevent the owner of goods sold by an agent from recovering from the buyer the price agreed to be paid for the same, or any part of that price, subject to any right of set off on the part of the buyer against the agent. R.S.O. 1914, c. 137, s. 13.

Saving for
common law
powers of
agents.
Idem, s. 13.

10. The provisions of this Act shall be construed in amplification and not in derogation of the powers exercisable by an agent independently of this Act. R.S.O. 1914, c. 137, s. 14.

CHAPTER 169.

The Warehousemen's Lien Act.

1. In this Act,—Interpreta-
tion.

- (a) "Warehouseman" shall mean a person lawfully engaged in the business of storing goods as bailee for hire; "Ware-
houseman."
- (b) "Goods" shall include personal property of every description that may be deposited with a warehouseman as bailee; "Goods."
- (c) "Charges" shall have the meaning assigned to it in section 2. 1924, c. 39, s. 2. "Charges."

2.—(1) Subject to the provisions of section 3, every warehouseman shall have a lien on goods deposited with him for storage, whether deposited by the owner of the goods or by his authority, or by any person entrusted with the possession of the goods by the owner or by his authority. Lien.

(2) The lien shall be for the amount of the warehouseman's charges, that is to say,— Amount of
lien.

- (a) all lawful charges for storage and preservation of the goods; and
- (b) all lawful claims for money advanced, interest, insurance, transportation, labour, weighing, coo-pering, and other expenses in relation to the goods; and
- (c) all reasonable charges for any notice required to be given under the provisions of this Act, and for notice and advertisement of sale, and for sale of the goods where default is made in satisfying the warehouseman's lien. 1924, c. 39, s. 3.

3.—(1) Where the goods on which a lien exists were deposited not by the owner or by his authority, but by a person entrusted by the owner or by his authority with the possession of the goods, the warehouseman shall, within two months after the date of the deposit, give notice of the lien,— Notice of
lien when
goods in
hands of
agent, etc.

- (a) to the owner of the goods, including the person in whom the right of property therein is vested where a valid receipt note, hire receipt or other instru-

Rev. Stat.
c. 165.

ment evidencing a bailment or conditional sale of the goods is registered (or filed) under *The Conditional Sales Act* at the date of deposit; and

Rev. Stat.
c. 164.

(b) to the grantee of the goods under any bill of sale or chattel mortgage registered (or filed) under *The Bills of Sale and Chattel Mortgage Act* at that date.

Form of
notice.

(2) The notice shall be in writing and contain,—

(a) a brief description of the goods; and

(b) a statement showing the location of the warehouse where the goods are stored, the date of their deposit with the warehouseman, and the name of the person by whom they were deposited; and

(c) a statement that a lien is claimed by the warehouseman in respect of the goods under this Act.

Failure to
give notice.

(3) Where the warehouseman fails to give the notice required by this section, his lien, as against the person to whom he has failed to give notice, shall be void as from the expiration of the period of two months from the date of the deposit of the goods. 1924, c. 39, s. 4.

Sale by public
auction.

4.—(1) In addition to all other remedies provided by law for the enforcement of liens or for the recovery of warehouseman's charges, a warehouseman may sell by public auction, in the manner provided in this section, any goods upon which he has a lien for charges which have become due.

Notice of
sale.

(2) The warehouseman shall give written notice of his intention to sell,—

(a) to the person liable as debtor for the charges for which the lien exists; and

(b) to the owner of the goods, including the person in whom the right of property therein is vested, where a valid receipt note, hire receipt or other instrument evidencing a bailment or conditional sale of the goods is registered (or filed) under *The Conditional Sales Act* at the date of deposit of the goods; and

Rev. Stat.
c. 165.

(c) to the grantee of the goods under any bill of sale or chattel mortgage registered (or filed) under *The Bills of Sale and Chattel Mortgage Act* at that date; and

Rev. Stat.
c. 164.

(d) to any other person known by the warehouseman to have or claim an interest in the goods.

(3) The notice shall contain,—

Form of
notice.

- (a) a brief description of the goods; and
- (b) a statement showing the location of the warehouse where the goods are stored, the date of their deposit with the warehouseman, and the name of the person by whom they were deposited; and
- (c) an itemized statement of the warehouseman's charges showing the sum due at the time of the notice; and
- (d) a demand that the amount of the charges as stated in the notice and such further charges as may accrue shall be paid on or before a day mentioned, not less than twenty-one days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination according to the due course of mail if it is sent by mail; and
- (e) a statement that unless the charges are paid within the time mentioned the goods will be advertised for sale and sold by public auction at a time and place specified in the notice.

(4) Where the charges are not paid on or before the day mentioned in the notice, an advertisement of the sale, describing the goods to be sold, and stating the name of the person liable as debtor for the charges for which the lien exists, and the time and place of the sale, shall be published at least once a week for two consecutive weeks in a newspaper published in the Province and circulating in the locality where the sale is to be held. The sale shall be held not less than fourteen days from the date of the first publication of the advertisement. 1924, c. 39, s. 5.

5. Where a notice of lien under the provisions of section 3, or a notice of intention to sell under the provisions of section 4 has been given, but such provisions have not been strictly complied with, if the court or a judge before whom any question respecting the notice is tried or inquired into considers that such provisions have been substantially complied with, or that it would be inequitable that the lien or sale shall be void by reason of such non-compliance, no objection to the sufficiency of the notice shall in any such case be allowed to prevail so as to release or discharge the goods from the lien or vitiate the sale. 1924, c. 39, s. 6.

Substantial
compliance
with
require-
ments.

6. From the proceeds of the sale the warehouseman shall satisfy his lien, and shall pay over the surplus, if any, to the person entitled thereto; and the warehouseman shall when paying over the surplus deliver to the person to whom he pays it a statement of account showing how the amount has been

Application
of proceeds
of sale.

computed. If the surplus is not demanded by the person entitled thereto within ten days after the sale, or if there are different claimants or the rights thereto are uncertain, the warehouseman shall pay the surplus into the Supreme Court upon the order of a judge. The order may be made *ex parte* upon such terms and conditions as to costs and otherwise as the judge may direct, and may provide to what fund or name the amount shall be credited. The warehouseman at the time of paying the amount into Court shall file in Court a copy of the statement of account showing how the amount has been computed. 1924, c. 39, s. 7.

Discharge
of lien.

7. At any time before the goods are sold any person claiming an interest or right of possession in the goods may pay the warehouseman the amount necessary to satisfy his lien, including the expenses incurred in serving notices and advertisement and preparing for the sale up to the time of the payment. The warehouseman shall deliver the goods to the person making the payment if he is the person entitled to the possession of the goods on payment of the warehouseman's charges thereon, otherwise the warehouseman shall retain possession of the goods according to the terms of the contract of deposit. 1924, c. 39, s. 8.

Notices,—
how given.

8. Where by this Act any notice in writing is required to be given, the notice shall be given by delivering it to the person to whom it is to be given, or by mailing it in the post office, postage paid and registered, addressed to him at his last known address. 1924, c. 39, s. 9.

Contract
not affected.

9. Nothing in this Act contained shall be deemed to affect the terms of the contract between the owner or bailor and the warehouseman and a warehouse receipt referring to this section and issued by a warehouseman, when delivered to the owner or bailor of the goods or mailed to him at his address last known to the warehouseman, shall constitute the contract between the owner or bailor and the warehouseman; provided that the owner or bailor may within twenty days after such delivery or mailing notify the warehouseman in writing that he does not accept such contract and thereupon he shall remove the goods deposited subject to the warehouseman's lien for charges and if such notice is not given then the said warehouse receipt so delivered or mailed shall constitute the contract. 1924, c. 39, s. 10.

CHAPTER 170.

The Partnership Act.

1.—(1) In this Act,—Interpre-
tation.

(a) “Business” shall include every trade, occupation and profession; “Business.”

(b) “Court” shall include every court and judge having jurisdiction in the case. “Court.”

(2) A person shall be deemed to be “insolvent” within the meaning of this Act if he has been adjudged a bankrupt under *The Bankruptcy Act*, or he has made an assignment for the general benefit of his creditors and “insolvency” shall have a meaning corresponding with “insolvent.” (See *Impl. Act*, 53 and 54 Vict., c. 39, s. 45.) 1920, c. 41, s. 2.

“Insolvent”
and “In-
solvency.”
1919, c. 36
(Dom).

NATURE OF PARTNERSHIP.

2. Partnership is the relation which subsists between persons carrying on a business in common with a view of profit, but the relation between the members of any company or association which is incorporated by or under the authority of any special or general Act in force in Ontario or elsewhere, or registered as a corporation under any such Act, is not a partnership within the meaning of this Act. (See *Impl. Act*, 53 and 54 Vict., c. 39, s. 1.) 1920, c. 41, s. 3.

Definition of
partnership.

3. In determining whether a partnership does or does not exist, regard shall be had to the following rules:—

Rules for
determining
existence of
partnership.

(1) Joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof.

(2) The sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived.

(3) The receipt by a person of a share of the profits of a business, is *prima facie* evidence that he is a partner in the business, but the receipt of such a share or payment, con-

tingent on or varying with the profits of a business, does not of itself make him a partner in the business, and in particular,—

- (a) the receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as such;
- (b) a contract for the remuneration of a servant or agent or a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such;
- (c) a person being the widow or child of a deceased partner, and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of such receipt a partner in the business or liable as such;
- (d) the advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such, providing that the contract is in writing and signed by or on behalf of all parties thereto;
- (e) a person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him of the goodwill of the business, is not by reason only of such receipt a partner in the business or liable as such. (*See* Impl. Act, 53 and 54 Vict., c. 39, s. 2.) 1920, c. 41, s. 4.

Postpone-
ment of
rights of
person
lending or
selling in
consideration
of share of
profits in
case of
insolvency.

4. In the event of any person to whom money has been advanced by way of loan upon such a contract as is mentioned in section 3, or of any buyer of the goodwill in consideration of a share of the profits of the business becoming insolvent or entering into an arrangement to pay his creditors less than one hundred cents in the dollar or dying in insolvent circumstances, the lender of the loan shall not be entitled to recover anything in respect of his loan, and the seller of the goodwill shall not be entitled to recover anything in respect of the share of profits contracted for until the claims of the other creditors of the borrower or buyer, for valuable consideration in money or money's worth, have been

satisfied. (*See* Impl. Act, 53 and 54 Vict., c. 39, s. 3.) 1920, c. 41, s. 5.

5. Persons who have entered into partnership with one another are, for the purposes of this Act, called collectively a firm, and the name under which their business is carried on is called the firm name. (*See* Impl. Act, 53 and 54 Vict., c. 39, s. 4.) 1920, c. 41, s. 6.

Meaning of firm.

6. Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership, and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member, bind the firm and his partners unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority, or does not know or believe him to be a partner. (*See* Impl. Act, 53 and 54 Vict., c. 39, s. 5.) 1920, c. 41, s. 7.

Power of partner to bind firm.

7. An act or instrument relating to the business of the firm and done or executed in the firm name, or in any other manner showing an intention to bind the firm by any person thereto authorized, whether a partner or not, is binding on the firm and all the partners, provided that this section shall not affect any general rule of law relating to the execution of deeds or negotiable instruments. (*See* Impl. Act, 53 and 54 Vict., c. 39, s. 6.) 1920, c. 41, s. 8.

Partners bound by acts on behalf of firm.

8. Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound, unless he is in fact specially authorized by the other partners, but this section does not affect any personal liability incurred by an individual partner. (*See* Impl. Act, 53 and 54 Vict., c. 39, s. 7.) 1920, c. 41, s. 9.

Partner using credit of firm for private purposes.

9. If it has been agreed between the partners that any restrictions shall be placed on the power of any one or more of them to bind the firm, no act done in contravention of the agreement is binding on the firm with respect to persons having notice of the agreement. (*See* Impl. Act, 53 and 54 Vict., c. 39, s. 8.) 1920, c. 41, s. 10.

Effect of notice that firm will not be bound by act of partner.

10. Every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner, and after his death his estate is also severally liable in a due course of administration for such debts and obligations so far as they remain unsatisfied, but subject to the prior payment of his separate debts. (*See* Impl. Act, 53 and 54 Vict., c. 39, s. 9.) 1920, c. 41, s. 11.

Liability of partners.

Liability of
the firm for
wrongs.

11. Where by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of his co-partners, loss or injury is caused to any person not being a partner of the firm, or any penalty is incurred, the firm is liable therefor to the same extent as the partner so acting or omitting to act. (*See Impl. Act, 53 and 54 Vict., c. 39, s. 10.*) 1920, c. 41, s. 12.

Misapplica-
tion of
money or
property
received for
or in custody
of the firm.

12. In the following cases, namely,—

- (a) where one partner, acting within the scope of his apparent authority, receives the money or property of a third person and misapplies it; and
- (b) where a firm in the course of its business receives money or property of a third person, and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm,

the firm is liable to make good the loss. (*See Impl. Act, 53 and 54 Vict., c. 39, s. 11.*) 1920, c. 41, s. 13.

Liability
for wrongs
joint and
several.

13. Every partner is liable jointly with his co-partners and also severally for everything for which the firm, while he is a partner therein, becomes liable under either of the two last preceding sections. (*See Impl. Act, 53 and 54 Vict., c. 39, s. 12.*) 1920, c. 41, s. 14.

Improper
employment
of trust
property for
partnership
purposes.

14. If a partner, being a trustee, improperly employs trust property in the business or on the account of the partnership, no other partner is liable for the trust property to the persons beneficially interested therein, but

- (a) this section shall not affect any liability incurred by any partner by reason of his having notice of a breach of trust; and
- (b) nothing in this section shall prevent trust money from being followed and recovered from the firm if still in its possession or under its control. (*See Impl. Act, 53 and 54 Vict., c. 39, s. 13.*) 1920, c. 41, s. 15.

Persons
liable by
"holding
out."

15.—(1) Every one who by words spoken or written or by conduct represents himself, or who knowingly suffers himself to be represented as a partner in a particular firm, is liable as a partner to any one who has on the faith of any such representation given credit to the firm, whether the representation has or has not been made or communicated to the persons so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made.

(2) Provided that where after a partner's death the partnership business is continued in the old firm name, the continued use of that name or of the deceased partner's name as part thereof shall not of itself make his executor's or administrator's estate or effects liable for any partnership debts contracted after his death. (*See Impl. Act, 53 and 54 Vict., c. 39, s. 14.*) 1920, c. 41, s. 16.

16. An admission or representation made by any partner concerning the partnership affairs, and in the ordinary course of its business, is evidence against the firm. (*See Impl. Act, 53 and 54 Vict., c. 39, s. 15.*) 1920, c. 41, s. 17.

17. Notice to any partner who habitually acts in the partnership business of any matter relating to partnership affairs operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner. (*See Impl. Act, 53 and 54 Vict., c. 39, s. 16.*) 1920, c. 41, s. 18.

18.—(1) A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a partner

(2) A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.

(3) A retiring partner may be discharged from any existing liabilities by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors, and this agreement may be either express or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted. (*See Impl. Act, 53 and 54 Vict., c. 39, s. 17.*) 1920, c. 41, s. 19.

19. A continuing guaranty or cautionary obligation given either to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of the transaction of which the guaranty or obligation was given. (*See Impl. Act, 53 and 54 Vict., c. 39, s. 18.*) 1920, c. 41, s. 20.

RELATION OF PARTNERS TO ONE ANOTHER.

20. The mutual rights and duties of partners, whether ascertained by agreement or defined by this Act, may be varied by the consent of all the partners, and such consent may be either expressed or inferred from a course of dealing. (*See Impl. Act, 53 and 54 Vict., c. 39, s. 19.*) 1920, c. 41, s. 21.

Partnership
property.

21.—(1) All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.

Devolution
of land.

(2) Provided that the legal estate or interest in any land, which belongs to the partnership shall devolve according to the nature and tenure thereof, and the general rules of law thereto applicable, but in trust, so far as necessary, for the persons beneficially interested in the land under this section.

Co-owners
of land.

(3) Where co-owners of an estate or interest in any land, not being itself partnership property, are partners as to profits made by the use of that land or estate, and purchase other land or estate out of the profits to be used in like manner, the land or estate so purchased belongs to them, in the absence of an agreement to the contrary, not as partners, but as co-owners for the same respective estates and interests as are held by them in the land or estate first mentioned at the date of purchase. (*See* Impl. Act, 53 and 54 Vict., c. 39, s. 20.) 1920, c. 41, s. 22.

Property
bought
with part-
nership
money.

22. Unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on the account of the firm. (*See* Impl. Act, 53 and 54 Vict., c. 39, s. 21.) 1920, c. 41, s. 23.

Conversion
of land
bought with
partnership
money into
personalty.

23. Where land or any heritable interest therein has become partnership property, it shall, unless the contrary intention appears, be treated as between the partners (including the representatives of a deceased partner) and also as between the heirs of a deceased partner and his executors or administrators as personal or movable and not real or heritable estate. (*See* Impl. Act, 53 and 54 Vict., c. 39, s. 22.) 1920, c. 41, s. 24.

Rules as to
interests
and duties
of partners.

24. The interests of partners in the partnership property and their rights and duties in relation to the partnership shall be determined, subject to any agreement express or implied between the partners, by the following rules:—

(1) All the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses, whether of capital or otherwise, sustained by the firm.

(2) The firm must indemnify every partner in respect of payments made and personal liabilities incurred by him,—

(a) in the ordinary and proper conduct of the business of the firm; or

(b) in or about anything necessarily done for the preservation of the business or property of the firm

(3) A partner making, for the purpose of the partnership any actual payment or advance beyond the amount of capital which he has agreed to subscribe, is entitled to interest at the rate of five per centum per annum from the date of the payment or advance.

(4) A partner is not entitled, before the ascertainment of profits, to interest on the capital subscribed by him.

(5) Every partner may take part in the management of the partnership business.

(6) No partner shall be entitled to remuneration for acting in the partnership business.

(7) No person may be introduced as a partner without the consent of all existing partners.

(8) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners.

(9) The partnership books are to be kept at the place of business of the partnership (or the principal place, if there is more than one), and every partner may, when he thinks fit, have access to and inspect and copy any of them. (*See Impl. Act, 53 and 54 Vict., c. 39, s. 24.*) 1920, c. 41, s. 25.

25. No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners. (*See Impl. Act, 53 and 54 Vict., c. 39, s. 25.*) 1920, c. 41, s. 26. Expulsion of partner.

26.—(1) Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of his intention so to do to all the other partners. Retirement from partnership at will.

(2) Where the partnership has originally been constituted by deed, a notice in writing, signed by the partner giving it, shall be sufficient for this purpose. (*See Impl. Act, 53 and 54 Vict., c. 39, s. 26.*) 1920, c. 41, s. 27. Notice of retirement.

27.—(1) Where a partnership, entered into for a fixed term, is continued after the term has expired, and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidents of a partnership at will. Presumption of continuance after expiry of term.

Arises from
continuance
of business.

(2) A continuance of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is presumed to be a continuance of the partnership. (*See* Impl. Act, 53 and 54 Vict., c. 39, s. 27.) 1920, c. 41, s. 28.

Duty as to
rendering
accounts.

28. Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives. (*See* Impl. Act, 53 and 54 Vict., c. 39, s. 28.) 1920, c. 41, s. 29.

Accounta-
bility for
private
profits.

29.—(1) Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or from any use by him of the partnership property name or business connection.

Extends to
survivors
and repre-
sentatives of
deceased.

(2) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs thereof have been completely wound up, either by any surviving partner or by the representatives of the deceased partner. (*See* Impl. Act, 53 and 54 Vict., c. 39, s. 29.) 1920, c. 41, s. 30.

Duty of
partner not
to compete
with firm.

30. If a partner, without the consent of the other partners, carries on any business of the same nature as and competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business. (*See* Impl. Act, 53 and 54 Vict., c. 39, s. 30.) 1920, c. 41, s. 31.

Rights of
assignee of
share in
partnership.

31.—(1) An assignment by any partner of his share in the partnership, either absolute or by way of mortgage or redeemable charge, does not, as against the other partners, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to acquire any accounts of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners.

On dissolu-
tion.

(2) In the case of a dissolution of the partnership, whether as respects all the partners or as respects the assigning partner, the assignee is entitled to receive the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution. (*See* Impl. Act, 53 and 54 Vict., c. 39, s. 31.) 1920, c. 41, s. 32.

DISSOLUTION OF PARTNERSHIP AND ITS CONSEQUENCES.

32. Subject to any agreement between the partners, a partnership is dissolved,— Dissolution by expiry of term or notice.

- (a) if entered into for a fixed term, by the expiration of that term;
- (b) if entered into for a single adventure, or undertaking, by the termination of that adventure or undertaking;
- (c) if entered into for an undefined time, by any partner giving notice to the other or others of his intention to dissolve the partnership.

In the last-mentioned case, the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is so mentioned, as from the date of the communication of the notice. (*See* Impl. Act, 53 and 54 Vict. c. 39, s. 32.) 1920, c. 41, s. 33. Date from which notice takes effect.

33.—(1) Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or insolvency of any partner. Dissolution by death or insolvency of partner.

(2) A partnership may, at the option of the other partners, be dissolved if any partner suffers his share of the partnership property to be charged under this Act for his separate debt. (*See* Impl. Act, 53 and 54 Vict., c. 39, s. 33.) 1920, c. 41, s. 34. Where partner's share charged for separate debt.

34. A partnership is in every case dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership. (*See* Impl. Act, 53 and 54 Vict., c. 39, s. 34.) 1920, c. 41, s. 35. By illegality of business.

35. On application by a partner the court may order a dissolution of the partnership in any of the following cases,— By the court.

- (a) when a partner is found lunatic by inquisition, or is shown to the satisfaction of the court to be of permanently unsound mind, in either of which cases the application may be made as well on behalf of that partner by his committee or next friend or person having title to intervene as by any other partner;
- (b) when a partner, other than the partner suing, becomes in any other way permanently incapable of performing his part of the partnership contract;

- (c) when a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the court, regard being had to the nature of the business, is calculated to prejudicially affect the carrying on of the business;
- (d) when a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him;
- (e) when the business of the partnership can only be carried on at a loss;
- (f) whenever in any case circumstances have arisen which, in the opinion of the court, render it just and equitable that the partnership be dissolved. (See Impl. Act, 53 and 54 Viet., c. 39, s. 35.) 1920, c. 41, s. 36.

Rights of
persons
dealing with
firm
against
apparent
members.

36.—(1) Where a person deals with a firm after a change in its constitution, he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change.

Notice.

(2) An advertisement in the *Ontario Gazette* shall be notice as to persons who had not dealings with the firm before the dissolution or change so advertised.

Estate of
dead or in-
solvent
partner how
far liable.

(3) The estate of a partner who dies, or who becomes insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, insolvency, or retirement respectively (See Impl. Act, 53 and 54 Viet., c. 39, s. 36.) 1920, c. 41, s. 37.

Right to
give notice
of dissolu-
tion.

37. On the dissolution of a partnership or retirement of a partner, any partner may publicly notify the same, and may require the other partner or partners to concur for that purpose in all necessary or proper acts, if any, which cannot be done without his or their concurrence. (See Impl. Act, 53 and 54 Viet., c. 39, s. 37.) 1920, c. 41, s. 38.

Continuing
authority of
partners for
purposes of
winding up.

38. After the dissolution of a partnership, the authority of each partner to bind the firm, and the other rights and obligations of the partners continue notwithstanding the dissolution so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise; provided that the firm is in no case bound by the acts of a partner who has become insolvent; but this proviso does not

Proviso.

affect the liability of any person who has, after the insolvency, represented himself or knowingly suffered himself to be represented as a partner of the insolvent. (See Impl. Act, 53 and 54 Vict., c. 39, s. 38.) 1920, c. 41, s. 39.

39. On the dissolution of a partnership every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm; and for that purpose any partner or his representative may, on the termination of the partnership, apply to the court to wind up the business and affairs of the firm. (See Impl. Act, 53 and 54 Vict., c. 39, s. 39.) 1920, c. 41, s. 40.

Rights of partners as to application of partnership property.

40. Where one partner has paid a premium to another on entering into a partnership for a fixed term, and the partnership is dissolved before the expiration of that term, otherwise than by the death of a partner, the court may order the repayment of the premium, or of such part thereof as it thinks just, having regard to the terms of the partnership contract and to the length of time during which the partnership has continued, unless,—

Apportionment of premium on premature dissolution.

- (a) the dissolution is, in the judgment of the court, wholly or chiefly due to the misconduct of the partner who paid the premium; or
- (b) the partnership has been dissolved by an agreement containing no provision for a return of any part of the premium. (See Impl. Act, 53 and 54 Vict., c. 39, s. 40.) 1920, c. 41, s. 41.

41. Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled,—

Rights where partnership dissolved for fraud or misrepresentations.

- (a) to a lien on, or right of retention of, the surplus of the partnership assets, after satisfying the partnership liabilities, for any sum of money paid by him for the purchase of a share in the partnership and for any capital contributed by him; and is
- (b) to stand in the place of the creditors of the firm for any payments made by him in respect of the partnership liabilities; and
- (c) to be indemnified by the person guilty of the fraud or making the representation against all the debts and liabilities of the firm. (See Impl. Act, 53 and 54 Vict., c. 39, s. 41.) 1920, c. 41, s. 42.

Right of
out-going
partner as to
share in
profits after
dissolution.

42.—(1) Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his estate, then, in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled, at the option of himself or his representatives, to such share of the profits made since the dissolution as the court may find to be attributable to the use of his share of the partnership assets, or to interest at the rate of five per centum per annum on the amount of his share of the partnership assets.

Proviso as
to option of
remaining
partners to
purchase
share.

(2) Provided that where by the partnership contract an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits, but if any partner, assuming to act in exercise of the option, does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section. (*See* Impl. Act, 53 and 54 Vict., c. 39, s. 42.) 1920, c. 41, s. 43.

Retiring or
deceased
partner's
share to be
a debt.

43. Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner or the representatives of a deceased partner in respect of the outgoing or deceased partner's share, is a debt accruing at the date of the dissolution, or death. (*See* Impl. Act, 53 and 54 Vict., c. 39, s. 43.) 1920, c. 41, s. 44.

Rule for
distribution
of assets on
final settle-
ment of
accounts.

44. In settling accounts between the partners after a dissolution of partnership, the following rules shall, subject to any agreement, be observed:—

- (a) Losses, including losses and deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits.
- (b) The assets of the firm, including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, shall be applied in the following manner and order,—
 - (i) in paying the debts and liabilities of the firm to persons who are not partners therein;
 - (ii) in paying to each partner rateably what is due from the firm to him for advances as distinguished from capital;

- (iii) in paying to each partner rateably what is due from the firm to him in respect to capital;
- (iv) the ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible. (*See* Impl. Act, 53 and 54 Vict., c. 39, s. 44.) 1920, c. 41, s. 45.

45. The rules of equity and of common law, applicable to partnership, shall continue in force except so far as they are inconsistent with the express provisions of this Act. (*See* Impl. Act, 53 and 54 Vict., c. 39, s. 46.) 1920, c. 41, s. 46.

46. This Act shall be read and construed as subject to the provisions of *The Limited Partnership Act* and *The Partnership Registration Act*. 1920, c. 41, s. 47.

Saving as to Rules of equity and common law.
Act to be subject to Rev. Stat. cc. 171, 172.

CHAPTER 171.

The Limited Partnership Act.

Formation of
limited
partnerships.

1. A limited partnership for the transaction of any mercantile, mechanical, manufacturing or other business within Ontario, except banking, the construction or operation of railways or the business of insurance, may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities hereinafter mentioned. R.S.O. 1914, c. 138, s. 2.

Of whom
to consist.

2. The partnership may consist of one or more persons, who shall be called general partners, and of one or more persons who contribute in actual cash payments a specific sum as capital to the common stock, who shall be called special partners. R.S.O. 1914, c. 138, s. 3.

Liability of
general and
special
partners.

3. General partners shall be jointly and severally responsible as general partners are by law, but special partners shall not be liable for the debts of the partnership beyond the amounts by them contributed to the capital. R.S.O. 1914, c. 138, s. 4.

General part-
ners only to
transact
business, etc.

4. The general partners only shall be authorized to transact business and sign for the partnership, and to bind the same. R.S.O. 1914, c. 138, s. 5.

Certificate
to be
signed.

5. The persons desirous of forming such partnership shall make and each of them shall sign a certificate (Form 1), which shall contain,—

Contents of.

- (a) the name under which the partnership business is to be carried on;
- (b) the general nature of the business intended to be carried on;
- (c) the names of all the general and special partners, distinguishing which are general and which are special partners, and their usual places of residence;
- (d) the amount of capital which each special partner has contributed;

(e) the time when the partnership is to commence and the time at which it is to terminate;

(f) the principal place of business of the partnership.
R.S.O. 1914, c. 138, s. 6.

6. The certificate shall be signed by the persons forming the partnership before a notary public who shall certify to the execution of the same. R.S.O. 1914, c. 138, s. 7. Execution of.

7. The certificate so signed and certified shall be filed in the office of the clerk of the county or district court of the county or district in which the principal place of business named in the certificate is situate, and shall be recorded by him at full length in a book to be kept for that purpose and open to public inspection. R.S.O. 1914, c. 138, s. 8. Where to be filed.

8. For filing and recording the certificate the clerk shall be entitled to receive the sum of twenty-five cents, and shall also be entitled to receive from every person searching in the book where such certificate is so recorded the sum of ten cents for each search. R.S.O. 1914, c. 138, s. 9. Fees.

9. No such partnership shall be deemed to have been formed until the certificate has been made, certified, and filed; and if any false statement is made in the certificate, all the members of the partnership shall be liable for all the engagements thereof as general partners. R.S.O. 1914, c. 138, s. 10. Partnership not formed until certificate filed.

10. Every renewal or continuance of a partnership beyond the time originally fixed for its duration shall be certified, filed and recorded in the manner herein required for its original formation; and every partnership otherwise renewed or continued shall be deemed a general partnership. R.S.O. 1914, c. 138, s. 11. Certificates of renewal or continuance.

11. Every alteration made in the partnership name, in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other manner specified in the original certificate shall be deemed a dissolution of the partnership, and every such partnership in any manner carried on after any such alteration has been made shall be deemed a general partnership, unless renewed as a limited partnership according to the provisions of the next preceding section. R.S.O. 1914, c. 138, s. 12. What alterations to be deemed a dissolution. Nature of partnership if continued.

12. The business of the partnership shall be conducted under a name in which the names of the general partners, or some or one of them only shall be used; and if the name of a special partner is used therein with his privity he shall be deemed a general partner. R.S.O. 1914, c. 138, s. 13. Partnership name.

Restrictions upon withdrawal of capital of special partners.

13. No part of the sum which a special partner has contributed to the capital shall be withdrawn by him, or paid or transferred to him as dividends, profits or otherwise, during the continuance of the partnership; but any partner may annually receive interest at a rate not exceeding five per centum per annum on the sum so contributed by him if the payment of such interest does not reduce the original amount of the capital; and if, after the payment of such interest, any profits remain to be divided he may also receive his share of such profits. R.S.O. 1914, c. 138, s. 14.

When special partner liable to refund.

14. If by the payment of interest or profits to a special partner the original capital has been reduced he shall be liable to restore the amount by which his share of the capital has been so reduced with interest. R.S.O. 1914, c. 138, s. 15.

Rights and liabilities of special partners.

15. A special partner may from time to time examine into the state and progress of the partnership business, and may advise as to its management; but he shall not transact any business on account of the partnership or be employed for that purpose as agent or otherwise; and if he does so he shall be deemed a general partner. R.S.O. 1914, c. 138, s. 16.

General partners liable to account.

16. The general partners shall be liable to account to each other and to the special partners for their management of the business in like manner as other partners. R.S.O. 1914, c. 138, s. 17.

Creditors preferred to special partners.

17. In case of the insolvency or bankruptcy of the partnership a special partner shall not, under any circumstances, be allowed to claim as a creditor until the claims of all the other creditors of the partnership have been satisfied. R.S.O. 1914, c. 138, s. 18.

No premature dissolution without notice, etc.

18. No dissolution of such partnership by the acts of the parties shall take place before the time specified in the certificate of its formation or of its renewal until a notice of such dissolution has been filed in the office in which the original certificate was filed and has been published once in each week, for three weeks, in a newspaper published in the county or district where the partnership has its principle place of business and for the same time in the *Ontario Gazette*. R.S.O. 1914, c. 138, s. 19.

FORM 1.

(Section 5.)

CERTIFICATE.

We, the undersigned, do hereby certify that we have entered into partnership under the name of (*B. D. & Co.*) as (*Grocers and Commission Merchants*), which firm consists of (*A. B.*) residing usually at _____, and, (*C. D.*) residing usually at _____, as General Partners; and (*E. F.*), residing usually at _____ and (*G. H.*) residing usually at _____, as Special Partners. The said (*E. F.*) having contributed (\$4,000) and the said (*G. H.*) (\$8,000) to the Capital of the Partnership.

The principal place of business of the Partnership is at _____

The said Partnership is to commence on the _____ day of _____ 19____, and is to terminate on the _____ day of _____, 19____.

Dated this _____ day of _____ 19____.
(Signed) _____
A. B.
C. D.
E. F.
G. H.

Signed in the presence of me,
L. M.,
Notary Public.

R.S.O. 1914, c. 138, Form 1.

CHAPTER 172.

The Partnership Registration Act.

FILING DECLARATIONS.

Persons in partnership to deliver a declaration to the registrar.

1.—(1) Persons associated in partnership for trading, manufacturing or mining purposes shall cause to be filed with the registrar of the registry division in which they carry on or intend to carry on business a declaration in writing (Form 1), signed by all the members of the partnership.

When some of the parties are absent.

(2) Where at the time of making the declaration any member is absent from the place where the partnership carries on or intends to carry on business the declaration shall be signed by the members present in their own names and also for any absent member, under his special authority to that effect, and such special authority shall at the same time be filed with the registrar and annexed to the declaration. R.S.O. 1914, c. 139, s. 2.

Requisites of declaration.

2. The declaration shall contain the names, surnames, additions and residences of every partner, and the name under which they carry on or intend to carry on business, and shall state also the time during which the partnership has subsisted, and shall also state that the persons therein named are the only members of the partnership. R.S.O. 1914, c. 139, s. 3.

When to be filed.

3. The declaration shall be filed within six months next after the formation of the partnership. R.S.O. 1914, c. 139, s. 4.

Declaration where change in partnership.

4.—(1) A similar declaration shall in like manner be filed whenever any change takes place in the membership of the partnership or in the name under which it carries on business, and every such declaration shall state the change in the membership of the partnership or in its name.

When to be filed.

(2) The declaration shall be filed within six months after the change takes place. R.S.O. 1914, c. 139, s. 5.

Effect of allegations in the declaration.

5. The statements made in any declaration shall not be controvertible by any person who has signed the same, nor as against any person not being a member of the partnership by any person who has signed the same, or who was really

a member of the partnership therein mentioned at the time the declaration was made. R.S.O. 1914, c. 139, s. 6.

6. Upon the dissolution of a partnership any or all of the persons who composed the partnership may sign a declaration (Form 2), certifying the dissolution of the partnership. R.S.O. 1914, c. 139, s. 7.

Declaration of dissolution of partnership.

7.—(1) Until a new declaration is made and filed by him, or by his partners or any of them, no person who signed the declaration filed shall be deemed to have ceased to be a partner.

Position of partners signing declaration.

(2) Nothing herein shall exempt from liability any person who, being a partner, fails to make and file the prescribed declaration, and such person may, notwithstanding such omission, be sued jointly with the partners mentioned in the declaration, or they may be sued alone, and, if judgment is recovered against them, he may be sued on the original cause of action upon which the judgment was recovered. R.S.O. 1914, c. 139, s. 8.

Liability of partners failing to make declaration.

INDIVIDUALS TRADING UNDER PLURAL NAME.

8.—(1) Every person engaged in business for trading, manufacturing or mining purposes who is not associated in partnership with any other person, but uses as his business style some name or designation other than his own name, or who in such style uses his own name with the addition of "and Company," or some other word or phrase indicating a plurality of members in the firm, shall cause to be filed with the registrar of the registry division in which such person carries on or intends to carry on business a declaration in writing signed by such person.

A person whose business style indicates plurality to file a declaration.

(2) Such declaration shall contain the name, surname, addition and residence of the person making the same, and the name under which he carries on or intends to carry on business, and shall also state that no other person is associated with him in partnership; and such declaration shall be filed within six months of the time when such name is first used. R.S.O. 1914, c. 139, s. 9.

Requisites of declaration.

PENALTIES.

9. Every member of a partnership or other person required to file a declaration under the provisions of this Act who fails to comply with the requirements thereof shall incur a penalty of \$100, to be recovered in any court of competent jurisdiction. R.S.O. 1914, c. 139, s. 10.

Penalty for non-compliance.

(See *Fines and Forfeitures Act, Rev. Stat. c. 129.*)

DUTIES OF REGISTRAR.

Registrar to record declaration.

10.—(1) The registrar shall enter the declarations, in the order in which the same are received, in a book to be by him kept for that purpose, which shall at all times during office hours be open to the inspection of the public without charge.

Registrar's fee for filing.

(2) For filing and entering each declaration the registrar shall be entitled to receive from the person filing the same fifty cents, if its does not contain more than two hundred words, and at the rate of ten cents per hundred words for all above the number of two hundred.

Indexes.

(3) The registrar shall keep two alphabetical index books of all declarations filed with him.

Form of "Firm Index."

(4) In one of such books, hereinafter called the "Firm Index," the registrar shall enter in alphabetical order the names of the firms in respect to which declarations have been filed with him, and shall place opposite each entry the names of the persons composing the firm, and the date of the receipt by him of the declaration, in the manner shown in Form 3.

Form of "Individual Index."

(5) In the second of such books, hereinafter called the "Individual Index," the registrar shall enter in alphabetical order the names of the respective members of each firm, and shall place opposite the entry the names of the firm of which each person is a member, and the date of the receipt of the declaration in the manner shown in Form 4.

Registrar's fees for certain services.

(6) The registrar shall be entitled for searches to the following fees and no more:

For searching in Firm Index—each firm ten cents;
For searching in Individual Index—each name ten cents;
For each certificate when required—twenty-five cents.

R.S.O. 1914, c. 139, s. 11.

Who to furnish registry books.

11. The books required for the purposes of this Act shall be furnished by the treasurer of the municipality whose duty it is to furnish registry books, or in case of his default, by the registrar in the same manner as other registry books. R.S.O. 1914, c. 139, s. 12.

MISCELLANEOUS.

Butter or cheese manufacturing cos. excepted.

12. This Act shall not apply to associations of individuals for the manufacture of butter or cheese and contributing produce from their dairies for that purpose. R.S.O. 1914, c. 139, s. 13.

Rights of partners inter se.

13. Nothing in this Act shall affect the rights of partners with regard to each other. R.S.O. 1914, c. 139, s. 14.

FORM 1.

(Section 1.)

DECLARATION OF PARTNERSHIP.

County *or* District) of _____
 We _____ of _____ in _____ (occu-
 pation) and _____ of _____ in _____
 (occupation), hereby certify

1. That we have carried on and intend to carry on trade and busi-
 ness as _____ at _____ in partnership, under
 the name of _____

2. That the said partnership has subsisted since the
 day of _____ 19 ____ .

3. And that we are and have been since the said day the only
 members of the said partnership.

Witness our hands at _____ this _____ day of
 19 ____ .

A. B.
 C. D.

R.S.O. 1914, c. 139, Form 1.

FORM 2.

(Section 6.)

DECLARATION OF DISSOLUTION OF PARTNERSHIP.

County (or District) of _____ } I,
 of _____ } formerly a member of the firm carrying
 at _____, in the _____ of _____, under
 the name of _____ do hereby certify that the said
 partnership was on the _____ day of _____ 19 ____ , dissolved.

Witness my hand, at _____, the _____ day of
 _____, 19 ____ .

A.B.

R.S.O. 1914, c. 139, Form 2.

FORM 3.
Section 10.
FIRM INDEX.

NAME OF FIRM	NAMES OF PERSONS COMPOSING THE FIRM.	DATE OF FILING DECLARATION
Abbott, Black & Co...	George Abbott, John Black, Edward Cook.	10th February, 19—.
Bernard Green & Jones	John Bernard, Edward Green, John Jones.	12th February, 19—.
Cook (Thos.) & Co. . . .	Thomas Cook, James Wilson.	14th February, 19—.
Dadson, William.	William Dadson, Thos. Jones, Robert Watson, William Wilberforce, Jas. Johnson	14th February, 19—.
Dick & Co.	Richard Dick	15th May, 19—.
Dow (Wm.) & Sons. . . .	William Dow	19th May, 19—.

R.S.O. 1914, c. 139, Form 3.

FORM 4.
Section 10.
INDIVIDUAL INDEX.

NAME OF INDIVIDUAL.	NAME OF FIRM OF WHICH A MEMBER.	DATE OF FILING DECLARATION
Abbott, George.	Abbott, Black & Co.	10th February, 19—.
Black, John.	Abbott, Black & Co.	10th February, 19—.
Bernard, John.	Bernard, Green & Jones.	12th February, 19—.
Cook, Edward.	Abbott, Black & Co.	10th February, 19—.
Cook, Thomas.	Thomas Cook & Co.	14th February, 19—.
Dadson, William.	William Dadson.	14th February, 19—.
Dick, Richard.	Dick & Co.	15th May, 19—.
Dow, William.	Wm. Dow & Sons.	19th May, 19—.

R.S.O. 1914, c. 139, Form 4.

SECTION X.

LABOUR AND WAGES.

CHAPTER 173.

The Mechanics' Lien Act.

1. In this Act,—

Interpreta-
tion.

- (a) "Contractor" shall mean a person contracting with or employed directly by the owner or his agent for the doing of work or service or placing or furnishing materials for any of the purposes mentioned in this Act; ^{"Contractor."}
- (b) "Material" or "Materials" shall include every kind of moveable property; ^{"Material."}
- (c) "Owner" shall extend to any person, body corporate or politic, including a municipal corporation and a railway company having any estate or interest in the land upon which or in respect of which the work or service is done, or materials are placed or furnished, at whose request and ^{"Owner."}
- (i) upon whose credit, or
 - (ii) on whose behalf, or
 - (iii) with whose privity and consent, or
 - (iv) for whose direct benefit

work or service is performed or materials are placed or furnished and all persons claiming under him or them whose rights are acquired after the work or service in respect of which the lien is claimed is commenced or the materials furnished have been commenced to be furnished;

"Registrar."

(d) "Registrar" shall include master of titles and local master of titles;

"Registry Office."

(e) "Registry Office" shall include land titles office;

"Sub-contractor."

(f) "Sub-contractor" shall mean a person not contracting with or employed directly by the owner or his agent for the purposes aforesaid, but contracting with or employed by a contractor, or under him by another sub-contractor;

"Wages."

(g) "Wages" shall mean money earned by a mechanic or labourer for work done by time or as piece work. 1923, c. 30, s. 2.

Exception of streets or highways.

2. Nothing in this Act shall extend to any public street or highway, or to any work or improvement done or caused to be done by a municipal corporation thereon. 1923, c. 30, s. 3.

Contracts waiving application of Act to be void.

3.—(1) Every agreement, verbal or written, express or implied, on the part of any workman, servant, labourer, mechanic or other person employed in any kind of manual labour intended to be dealt with in this Act, that this Act shall not apply, or that the remedies provided by it shall not be available for the benefit of such person, shall be null and void.

Exception as to certain employees.

(2) This section shall not apply to a manager, officer or foreman, or to any other person whose wages are more than \$10 a day. 1923, c. 30, s. 4.

Effect upon third party of agreement waiving lien.

4. No agreement shall deprive any person otherwise entitled to a lien under this Act who is not a party to the agreement, of the benefit of the lien, but it shall attach, notwithstanding such agreement. 1923, c. 30, s. 5.

General right of workman or material man to a lien.

5.—(1) Unless he signs an express agreement to the contrary and in that case subject to the provisions of section 3, any person who performs any work or service upon or in respect of, or places or furnishes any materials to be used in the making, constructing, erecting, fitting, altering, improving or repairing of any erection, building, railway, land, wharf, pier, bulkhead, bridge, trestlework, vault, mine, well, excavation, fence, sidewalk, pavement, fountain, fishpond, drain, sewer, aqueduct, roadbed, way, fruit or ornamental trees, or the appurtenances to any of them for any owner, contractor, or sub-contractor, shall by virtue thereof have a lien for the price of such work, service or materials upon the estate or interest of the owner in the erection, building, railway, land, wharf, pier, bulkhead, bridge, trestlework, vault, mine, well excavation, fence, sidewalk, paving, fountain, fishpond,

drain, sewer, aqueduct, roadbed, way, fruit or ornamental trees, and appurtenances and the land occupied thereby or enjoyed therewith, or upon or in respect of which such work or service is performed, or upon which such materials are placed or furnished to be used, limited, however, in amount to the sum justly due to the person entitled to the lien and to the sum justly owing, except as herein provided, by the owner; the placing or furnishing of such materials to be used, upon the said lands or such other place in the immediate vicinity of the said land designated by the owner or his agent shall be good and sufficient delivery for the purpose of this Act, but delivery on the said designated land shall not make such land subject to a lien.

(2) The lien given by subsection 1 shall attach to the lands as therein set out where the materials delivered to be used are incorporated into the buildings, erections or structures on such land, notwithstanding such materials may not have been delivered in strict accordance with the provisions of subsection 1. 1923, c. 30, s. 6.

Lien attaches where materials incorporated into building.

6. Where work is done or services are performed or materials are furnished to be used upon or in respect of the land of a married woman or in which she has any interest or an inchoate right of dower, with the privity and consent of her husband he shall be conclusively presumed to be acting as her agent as well as for himself for the purposes of this Act unless before doing such work or performing such services or furnishing such materials the person doing, performing or furnishing the same shall have had actual notice to the contrary. 1923, c. 30, s. 7.

When husband's interest liable for work done or materials furnished on land of married woman.

7.—(1) Where the estate or interest upon which the lien attaches is leasehold the fee simple shall also be subject to the lien, provided the person doing the work or supplying the material gives notice in writing, by registered letter or personal service, referring to the section, to the owner or his agent of the work to be done or material to be furnished, unless the owner or his agent within ten days thereafter gives notice to such person that he will not be responsible therefor.

Where estate charged is leasehold.

(2) No forfeiture or attempted forfeiture of the lease on the part of the landlord or cancellation or attempted cancellation of the lease except for non-payment of rent shall deprive any person otherwise entitled to a lien under this Act of the benefit of the lien provided that the person entitled to the lien may pay any rent accruing after he becomes so entitled and the amount so paid may be added to his claim.

Forfeiture or cancellation of lease—effect of on lienholder.

(3) Where the land and premises upon or in respect of which any work or service is performed or materials are furnished to be used, is encumbered by a prior mortgage or other charge existing in fact before any lien arises such mort-

Prior mortgage.

gage or other charge shall have priority over all liens under this Act to the extent of the actual value of such land and premises at the time the first lien arose, such value to be ascertained by the judge or officer having jurisdiction to try the action by proper evidence to be adduced before him.

Agreement
for purchase.

(4) Where there is an agreement for the purchase of land and the purchase money or a part thereof is unpaid and no conveyance has been made to the purchaser he shall for the purposes of this Act be deemed a mortgagor and the seller a mortgagee. 1923, c. 30, s. 8.

Application
of insurance
when lien
attaches.

8. Where any of the property upon which a lien attaches is wholly or partly destroyed by fire any money received by reason of any insurance thereon by an owner or prior mortgagee or chargee shall take the place of the property so destroyed and shall, after satisfying any prior mortgage or charge in the manner and to the extent set out in subsection 3 of section 7, be subject to the claims of all persons for liens to the same extent as if such money had been realized by a sale of such property in an action to enforce the lien. 1923, c. 30, s. 9.

Limit of
amount of
owner's
liability.

9. Save as herein otherwise provided the lien shall not attach so as to make the owner liable for a greater sum than the sum payable by the owner to the contractor. 1923, c. 30, s. 10.

Limit of
lien when
claimed by
some other
than con-
tractor.

10. Save as herein otherwise provided where the lien is claimed by any person other than the contractor the amount which may be claimed in respect thereof shall be limited to the amount owing to the contractor or subcontractor or other person for whom the work or service has been done or the materials placed or furnished. 1923, c. 30, s. 11.

Retention of
percentage
by owner
for thirty
days.

11.—(1) In all cases the person primarily liable upon any contract under or by virtue of which a lien may arise shall, as the work is done or materials are furnished under the contract, retain for a period of thirty days after the completion or abandonment of the work done or to be done under the contract twenty per centum of the value of the work, service and materials actually done, placed or furnished, as mentioned in section 5 irrespective of whether the contract or subcontract provides for partial payments or payment on completion of the work and such value shall be calculated on the basis of the contract price, or if there is no specific contract price, then on the basis of the actual value of the work, service or materials.

Where con-
tract price
exceeds
\$15,000.

(2) Where the contract price or actual value exceeds \$15,000 the amount to be retained shall be fifteen per centum instead of twenty per centum.

(3) The lien shall be a charge upon the amount directed to be retained by this section in favour of lienholders whose liens are derived under persons to whom such moneys so required to be retained are respectively payable.

Effect of
lien on
amounts
retained.

(4) All payments up to eighty per centum as fixed by subsection 1 or up to eighty-five per centum as fixed by subsection 2 made in good faith by an owner to a contractor, or by a contractor to a sub-contractor, or by one sub-contractor to another sub-contractor, before notice in writing of such lien given by the person claiming the lien to the owner, contractor or sub-contractor as the case may be shall operate as a discharge *pro tanto* of the lien.

Payments
made in
good faith
without
notice of
lien.

(5) Payment of the percentage required to be retained under this section may be validly made so as to discharge all liens or charges in respect thereof after the expiration of the period of thirty days mentioned in subsection 1 unless in the meantime proceedings have been commenced to enforce any lien or charge against such percentage as provided by sections 22 and 23, in which case the owner may pay the percentage into court in such proceedings and such payment shall constitute valid payment in discharge of the owner to the amount thereof. 1923, c. 30, s. 12.

Payment of
percentage
and
discharge
of liens.

12.—(1) If an owner, contractor or sub-contractor makes a payment to any person entitled to a lien under section 5 for or on account of any debt, justly due to him for work or service done or for materials placed or furnished to be used as therein mentioned, for which he is not primarily liable, and within three days afterwards gives written notice of such payment to the person primarily liable, or his agent, such payment shall be deemed to be a payment on his contract generally to the contractor or sub-contractor primarily liable but not so as to affect the percentage to be retained by the owner as provided by section 11.

Payments
made direct
by owner
to persons
entitled to
lien.

(2) Every sub-contractor shall be entitled to enforce his lien notwithstanding the non-completion or abandonment of the contract by any contractor or sub-contractor under whom he claims. 1923, c. 30, s. 13.

Rights of
sub-con-
tractor on
non-comple-
tion or aban-
donment of
contract.

13.—(1) The lien shall have priority over all judgments, executions, assignments, attachments, garnishments, and receiving orders recovered, issued or made after such lien arises, and over all payments or advances made on account of any conveyance or mortgage after notice in writing of such lien to the person making such payments or after registration of a claim for such lien as hereinafter provided.

Priority of
lien.

(2) Except where it is otherwise provided by this Act no person entitled to a lien on any property or money shall be entitled to any priority or preference over another person of the same class entitled to a lien on such property or money,

Priority
among
lienholders.

and each class of lienholders shall rank *pari passu* for their several amounts, and the proceeds of any sale shall be distributed among them *pro rata* according to their several classes and rights. 1923, c. 30, s. 14.

PRIORITY OF WAGES IN CERTAIN CASES.

Priority of
lien
for wages.

14.—(1) Every mechanic or labourer whose lien is for wages shall, to the extent of thirty days' wages, have priority over all other liens derived through the same contractor or sub-contractor to the extent of and on the twenty per centum or fifteen per centum as the case may be, directed to be retained by section 11 to which the contractor or sub-contractor through whom such lien is derived is entitled and all such mechanics and labourers shall rank *pari passu*.

Enforcing
lien in
such cases.

(2) Every wage-earner shall be entitled to enforce a lien in respect of any contract or sub-contract not completely fulfilled and, notwithstanding anything to the contrary in this Act provided, may serve a notice of motion on the proper parties returnable in four days after service thereof before the judge or officer having jurisdiction under this Act, that said applicant will on the return of the motion ask for judgment on his claim for lien, registered particulars of which shall accompany such notice of motion duly verified by affidavit.

Calculating
percentage
when con-
tract not
fulfilled.

(3) If the contract has not been completed when the lien is claimed by a wage-earner, the percentage shall be calculated on the value of the work done or materials furnished by the contractor or sub-contractor by whom such wage-earner is employed having regard to the contract price, if any.

Percentage
not to be
otherwise
applied.

(4) Where the contractor or sub-contractor makes default in completing his contract the percentage shall not as against a wage earner claiming a lien, be applied by the owner or contractor to the completion of the contract or for any other purpose nor to the payment of damages for the non-completion of the contract by the contractor or sub-contractor nor in payment or satisfaction of any claim against the contractor or sub-contractor.

Devices to
defeat
priority
of wage
earners.

(5) Every device by an owner, contractor or sub-contractor to defeat the priority given to a wage-earner for his wages and every payment made for the purpose of defeating or impairing a lien shall be null and void. 1923, c. 30, s. 15.

(NOTE: As to claims for Wages against Mines, see *The Mining Act, Rev. Stat. c. 45.*)

MATERIAL.

Restraining
attempt to
remove
material
affected by
lien.

15.—(1) During the continuance of a lien no part of the material affected thereby shall be removed to the prejudice of the lien.

(2) Material actually delivered to be used for any of the purposes enumerated in section 5, shall be subject to a lien in favour of the person furnishing it until placed in the building, erection or work, and shall not be subject to execution or other process to enforce any debt other than for the purchase thereof due to the person furnishing the same. Exemption from execution of material furnished for certain purposes.

(3) The judge or officer trying the action may direct the sale of any material or authorize its removal. 1923, c. 30, s. 16. State of material.

REGISTRATION OF LIEN

(As to registration of liens against mining claims and mining lands, see Rev. Stat. c. 45, s. 181.)

16.—(1) A claim for a lien, (Forms 1, 2 and 3), may be registered in the proper registry office and shall set out: Registration of claim for lien.

- (a) the name and residence of the person claiming, the lien and of the owner or of the person whom the person claiming the lien, or his agent, believes to be the owner of the land, and of the person for whom the work or service was or is to be done, or materials furnished or placed, and the time within which the same was or was to be done or furnished or placed;
- (b) a short description of the work or service done or to be done, or materials furnished or placed or to be placed or to be furnished or placed;
- (c) the sum claimed as due or to become due;
- (d) a description of the land sufficient for the purpose of registration and where the land is registered under *The Land Titles Act*, Rev. Stat. c. 158. also a reference to the number of the parcel of the land and to the register in which such land is registered in the land titles office.
- (e) the date of expiry of the period of credit when credit has been given.

(2) The claim shall be verified in duplicate by the affidavit, (Form 4) of the person claiming the lien, or of his agent or assignee, having a personal knowledge of the matters required to be verified, and the affidavit of the agent or assignee shall state that he has such knowledge. Form of affidavit.

(3) When it is desired to register a claim for lien against a railway it shall be sufficient description of the land of the railway company to describe it as the land of the railway company and every such claim shall be registered in the railway. Description of lands where lien registered against railway.

general register in the office for the registry division within which such lien is claimed to have arisen. 1923, c. 30, s. 17.

What may
be included
in claim.

17.—(1) A claim for lien may include claims against any number of properties, and any number of persons claiming liens upon the same property may unite therein, but where more than one lien is included in one claim each lien shall be verified by affidavit as provided in section 16.

Apportion-
ment of
claims
against
different
properties.

(2) The judge or officer shall have jurisdiction equitably to apportion against the respective properties the amounts included in any claim or claims for liens under subsection 1. 1923, c. 30, s. 18.

Informality
in cases of
registering
liens.

18.—(1) A substantial compliance with sections 16, 17 and 29 shall be sufficient and no lien shall be invalidated by reason of failure to comply with any of the requisites of these sections unless, in the opinion of the judge or officer who tries an action under this Act, the owner, contractor or sub-contractor, mortgagee or other person, is prejudiced thereby, and then only to the extent to which he is thereby prejudiced.

Exception.

(2) Nothing in this section shall dispense with registration of the claim for lien. 1923, c. 30, s. 19.

Effect of
registration.

19.—(1) The registrar, upon payment of the proper fee shall register the claim, describing it as "Mechanic's Lien" against the land therein described in like manner as if it were a mortgage, and shall certify the registration upon the duplicate, but he shall not copy the claim or affidavit in any registry book, and the duplicates shall be filed in the office of the Master or the clerk of the county or district court of the county or district in which the land is situate on or before the trial of the action.

Fee for
registration.

(2) The fee for registration of a claim for lien shall be twenty-five cents, and if several persons join in one claim the registrar shall be entitled to a further fee of ten cents for each person after the first. 1923, c. 30, s. 20.

Status of
lien-holder.

20. Where a claim is so registered the person entitled to a lien shall be deemed a purchaser *pro tanto* and within the provisions of *The Registry Act* and *The Land Titles Act*, but except as herein otherwise provided those Acts shall not apply to any lien arising under this Act. 1923, c. 30, s. 21.

Limit of
time for
registration.

21.—(1) A claim for lien by a contractor or sub-contractor in cases not otherwise provided for, may be registered before or during the performance of the contract; or of the sub-contract or within thirty days after the completion or abandonment of the contract or of the sub-contract as the case may be.

(2) A claim for lien for materials may be registered before Materials. or during the furnishing or placing thereof, or within thirty days after the furnishing or placing of the last material so furnished or placed.

(3) A claim for lien for services may be registered at any Services. time during the performance of the service or within thirty days after the completion of the service.

(4) A claim for lien for wages may be registered at any time Wages. during the performance of the work for which such wages are claimed, or within thirty days after the last work is done for which the lien is claimed.

(5) In the case of a contract which is under the supervision In case of supervision by architect, etc., etc. of an architect, engineer or other person upon whose certificates payments are to be made, the claim for lien by a contractor may be registered within the time mentioned in subsection 1, or within seven days after the architect, engineer or other person has given or has, upon application in writing to him by the contractor, refused or neglected for three days after such application to give a final certificate.

(6) Every lienholder who does not register a claim for Duty of lienholder whose lien is not registered. lien and whose lien is preserved by an action commenced by another lienholder shall nevertheless before the day appointed for the trial of such action give written notice of his lien to the owner or his agent, the mortgagee or his agent and the lienholder who has commenced action, and deposit with the proper officer of the county or district concerned, particulars of his claim verified by affidavit. 1923, c. 30, s. 22.

EXPIRY AND DISCHARGE OF LIEN.

22. Every lien for which a claim is not registered shall Expiry of liens. absolutely cease to exist on the expiration of the time hereinbefore limited for the registration thereof, unless in the meantime an action is commenced to realize the claim or in which the claim may be realized, under the provisions of this Act and a certificate thereof is registered in the registry office in which the claim for lien might have been registered. 1923, c. 30, s. 23.

23. Every lien for which a claim has been registered When lien to cease if registered and not proceeded upon. shall absolutely cease to exist on the expiration of ninety days after the work or service has been completed or materials have been furnished or placed, or after the expiry of the period of credit, where such period is mentioned in the claim for lien registered, or in the cases provided for by subsection 5 of section 21, on the expiration of thirty days from the registra-

tion of the claim, unless in the meantime an action is commenced to realize the claim or in which the claim may be realized under the provisions of this Act, and a certificate is registered as provided by the next preceding section. 1922, c. 30, s. 24.

Assign-
ment or
death of
lienholder.

24. The right of a lienholder may be assigned by an instrument in writing and, if not assigned, upon his death shall pass to his personal representative. 1923, c. 30, s. 25.

Discharge
of lien.

25.—(1) A lien may be discharged by a receipt signed by the claimant, or his agent duly authorized in writing, acknowledging payment, and verified by affidavit and registered.

Registration.

(2) The receipt shall be numbered and entered like other instruments, but shall not be copied in any registry book, and there shall be entered against the entry of the lien to which the discharge relates the word "discharged" and the registration number of such discharge.

Fee

(3) The fee shall be the same as for registering a claim.

Security or
payment
into court
and vacat-
ing lien
thereon.

(4) Upon application the judge or officer having jurisdiction to try an action to realize a lien, may allow security for or payment into court of the amount of the claim and such costs as the judge or officer may fix, and may thereupon order that the registration of the lien be vacated or may vacate the registration upon any other proper ground and a certificate of the order may be registered.

Money paid
into court.

(a) Any money so paid into court shall take the place of the property discharged and be subject to the claims of all persons for liens to the same extent as if such money was realized by a sale of such property in an action to enforce the lien.

When notice
of applica-
tion to
vacate not
requisite.

(5) Where the certificate required by section 22 or section 23 has not been registered within the prescribed time, and an application is made to vacate the registration of a claim for lien after the time for registration of such certificate, the order vacating the lien may be made *ex parte* upon production of the certificate of the proper registrar certifying the facts entitling the applicant to such order. 1923, c. 30, s. 26.

EFFECT OF TAKING SECURITY OR EXTENDING TIME.

Effect
generally.

26.—(1) The taking of any security for, or the acceptance of any promissory note or bill of exchange for, or the taking of any acknowledgment of the claim, or the giving of time for the payment thereof, or the taking of any proceedings for the recovery, or the recovery of a personal judgment for the claim, shall not merge, waive, pay, satisfy, prejudice or destroy the lien unless the claimant agrees in writing that it shall have that effect.

(2) Where any such promissory note or bill of exchange has been negotiated the lienholder shall not thereby lose his lien, if, at the time of bringing his action to enforce it, or where an action is brought by another lienholder, he is, at the time of proving his claim in such action, the holder of such promissory note or bill of exchange.

When period
of credit
not expired.

(3) Nothing in subsection 2 shall extend the time limited by this Act for bringing the action to enforce the lien.

Time for
bringing
action not
extended.

(4) A person who has extended the time for payment of a claim for which he has a lien, to obtain the benefit of this section, shall commence an action to enforce such lien within the time prescribed by this Act, and shall register a certificate as required by sections 22 and 23, but no further proceedings shall be taken in the action until the expiration of such extension of time. 1923, c. 30, s. 27.

Time for
bringing
action by
person who
gave time
for
payment.

27. Where the period of credit in respect of a claim has not expired, or where there has been an extension of time, for payment of the claim, the lienholder may nevertheless, if an action is commenced by any other person to enforce a lien against the same property, prove and obtain payment of his claim in such action as if the period of credit or the extended time had expired. 1923, c. 30, s. 28.

Proving
claim in
action by
another
lienholder.

LIENHOLDER'S RIGHTS TO INFORMATION.

28.—(1) Any lienholder may, in writing, at any time demand of the owner or his agent the production, for inspection, of the contract or agreement with the contractor for or in respect of which the work, service or material is or is to be performed or furnished or placed, if such contract or agreement is in writing or if not in writing, the terms of such contract or agreement and the state of the accounts between the owner and the contractor, and if such owner or his agent does not at the time of such demand, or within a reasonable time thereafter, produce the said contract or agreement if in writing or, if not in writing, does not inform the person making such demand of the terms of such contract or agreement and the amount due and unpaid upon such contract or agreement or if he knowingly falsely states the terms of the contract or agreement or the amount due or unpaid thereon and if the person claiming the lien sustains loss by reason of such refusal or neglect or false statement, the owner shall be liable to him for the amount of such loss in an action therefor or in any action for the enforcement of a lien under this Act and subsection 3 of section 35 shall apply.

Production
of contract
or agree-
ment.

(2) Any lienholder may in writing at any time demand of a mortgagee or unpaid vendor or his agent the terms of any mortgage on the land or of any agreement for the purchase of the said lands in respect of which the work, service

Statement
of mort-
gagee or
unpaid
vendor.

or material is or is to be performed, furnished or placed and a statement showing the amount advanced on the said mortgage or the amount owing on the said agreement as the case may be, and if such mortgagee or vendor or his agent fails to inform said lienholder at the time of such demand or within a reasonable time thereafter of the terms of the said mortgage or agreement and the amount advanced or owing thereon or if he knowingly falsely states the terms of the said mortgage or agreement and the amount owing thereon and such lienholder sustains loss by such refusal or neglect or mis-statement, the mortgagee or vendor shall be liable to him for the amount of such loss in an action therefor or in any action for the enforcement of a lien under this Act, and subsection 3 of section 35 shall apply.

Production
of contract
or agree-
ment.

(3) The judge or officer having jurisdiction to try an action to realize a lien may, on a summary application at any time before or after any action is commenced for the enforcement of such lien, make an order requiring the owner or his agent or the mortgagee or his agent or unpaid vendor or his agent as the case may be to produce and allow any lienholder to inspect any such contract or agreement or mortgage or agreement for sale upon such terms as to costs as he may deem just. 1923, c. 30, s. 29.

ACTION TO REALIZE CLAIM.

Mode of
realizing
lien.

29.—(1) A lien shall be enforced in the Supreme Court in an action to be commenced by filing in the proper office a statement of claim, verified by affidavit, (Form 5), which affidavit may be made by any of the persons named in subsection 2 of section 16. 1923, c. 30, s. 30 (1) cl. (a).

Service.

(2) The statement of claim shall be served within one month after it is filed, but a judge or officer having jurisdiction to try the action may extend the time for service thereof, and the time for delivering the statement of defence shall be the same as for entering an appearance in an action in the Supreme Court.

Parties.

(3) It shall not be necessary to make any lienholders parties defendant to the action, but all lienholders served with the notice of trial shall for all purposes be deemed parties to the action. 1923, c. 30, s. 30 (2, 3).

(4) After the commencement of any action under this Act any lienholder or other person interested may move before the judge or officer having jurisdiction, to speed the trial of such action. 1923, c. 30, s. 30 (1) cl. (b).

Lienholders
joining
in action.

30. Any number of lienholders claiming liens on the same land may join in an action and an action brought by a lienholder shall be deemed to be brought on behalf of himself and all other lienholders. 1923, c. 30, s. 31.

31.—(1) The action shall be tried in the County of York before the Master, or the Assistant Master, and outside the County of York before a judge of the county or district court of the county or district in which the land is situate. Who may try action to enforce lien.

(2) Notwithstanding the provisions of subsection 1 upon the application of any party to an action, made according to the practice of the Supreme Court, and upon notice the Court may direct that the action be tried before a judge of the Supreme Court at the regular sittings of the said Court for the trial of actions in the county or district in which the land is situate. 1923, c. 30, s. 32. When action may be tried in Supreme Court.

32.—(1) The Master, Assistant Master and the county or district judge, in addition to their ordinary powers shall have all the jurisdiction, powers and authority of the Supreme Court to try and completely dispose of the action and questions arising therein. Powers of certain officers.

(2) Where an owner enters into an entire contract for the supply of material to be used in several buildings the person supplying such material may ask to have his lien follow the form of the contract and that it be for an entire sum upon all the buildings, but in case the owner has sold one or more of such buildings, the judge or officer shall have jurisdiction equitably to apportion against the respective buildings the amount included in the claim for lien under the entire contract. 1923, c. 30, s. 33. Where contract covers several buildings.

33. Where more actions than one are brought to realize liens in respect of the same land a judge or officer having jurisdiction to try such actions may, on the application of any party to any one of the actions, or on the application of any other person interested, consolidate all such actions into one action, and may give the conduct of the consolidated action to any plaintiff as he may see fit. 1923, c. 30, s. 34. Consolidation of actions.

34. Any lienholder entitled to the benefit of an action may apply for the carriage of the proceedings, and the judge or officer may make an order giving such lienholder the carriage of the proceedings. 1923, c. 30, s. 35. Transferring carriage of proceedings.

35.—(1) After the delivery of the statement of defence where the plaintiff's claim is disputed, or after the time for delivery of defence in all other cases and except where the trial is to take place before a judge of the Supreme Court under subsection 2 of section 31 either party may apply *ex parte* to a judge or officer who has jurisdiction to try the action to fix a day for the trial thereof, and the judge or officer shall appoint the time and place of trial. Appointing day for trial.

Notice of
trial and
service of.

(2) The party obtaining an appointment for the trial shall, at least ten clear days before the day appointed, serve notice of trial (Form 6) upon the solicitors for the defendants who appear by solicitors and upon defendants who appear in person, and on all lienholders who have registered their claims as required by this Act or of whose claims he has notice, and on all other persons having any charge, incumbrance or claim on the land subsequent in priority to the lien, who are not parties, and such service shall be personal unless otherwise directed by the judge or officer who may direct in what manner the notice of trial may be served.

- (a) Where any person interested in the land has been served with statement of claim and makes default in delivering statement of defence, he shall nevertheless be served with notice of trial and shall be entitled to defend on such terms as to costs and otherwise as the judge or officer trying the action may deem just.

Trial.

(3) The judge or officer shall try the action and all questions which arise therein or which are necessary to be tried in order to completely dispose of the action and to adjust the rights and liabilities of the persons appearing before him or upon whom the notice of trial has been served, and shall take all accounts, make all inquiries, give all directions and do all other things necessary to finally dispose of the action and of all matters, questions and accounts arising therein or at the trial, and to adjust the rights and liabilities of and give all necessary relief to all parties to the action and all persons who have been served with the notice of trial and shall embody the results in a judgment, (Form 7) which judgment may direct payment forthwith by the person or persons primarily liable to pay the amount of the claims and costs as ascertained by the judgment and execution may be issued therefor forthwith.

- (a) The form of the judgment may be varied by the judge or officer in order to meet the circumstances of the case so as to afford to any party to the proceedings any right or remedy in the judgment to which he may be entitled.

Sale.

(4) The judge or officer may order that the estate or interest charged with the lien may be sold and may direct the sale to take place at any time after judgment, allowing, however, a reasonable time for advertising such sale.

Letting in
lienholders
who have
not proved
their claims
at trial.

(5) A lienholder who has not proved his claim at the trial, on application to the judge or officer before whom the action was tried, may be let in to prove his claim on such terms as to costs and otherwise as may be deemed just at any time before the amount realized in the action for the

satisfaction of liens has been distributed, and where such a claim is allowed the judgment shall be amended so as to include such claim.

(6) Every lienholder for an amount not exceeding \$100 may be represented by an agent who is not a solicitor. 1923, c. 30, s. 36. Right of lienholders to representation.

36.—(1) Where a sale is had, the moneys arising therefrom shall be paid into court to the credit of the action and the judge or officer shall make a report on the sale and therein direct to whom the moneys in court shall be paid and may add to the claim of the person conducting the action his fees and actual disbursements incurred in connection with the sale, and where sufficient to satisfy the judgment and costs is not realized from the sale he shall certify the amount of the deficiency and the names of the persons who are entitled to recover the same, showing the amount which each is entitled to recover and the persons adjudged to pay the same, giving credit for payments made, if any, under subsection 3 of section 35, and the persons so entitled may enforce payment of the amounts so found to be due by execution or otherwise. Report where sale is had.

(2) The judge or officer may make all necessary orders for the completion of the sale and for vesting the property in the purchaser. Completion of sale,—judge's order as to.

(3) Where a claimant fails to establish a valid lien he may nevertheless recover a personal judgment against any party to the action for such sum as may appear to be due to him and which he might recover in an action against such party. 1923, c. 30, s. 37. Where lien not established.

37. Where property subject to a lien is sold in an action to enforce a lien, every lienholder shall be entitled to share in the proceeds of the sale in respect of the amount then owing to him, although the same or part thereof was not payable at the time of the commencement of the action or is not then presently payable. 1923, c. 30, s. 38. Right of lienholders whose claims are not payable to share in proceeds.

PAYMENTS OUT OF COURT.

38.—(1) Where money has been paid into court and the time for the payment out has arrived, the judge or officer shall forward a certified copy of his judgment and of the report on sale, if any, to the accountant of the Supreme Court, whereupon the cheques shall be delivered by the accountant to the persons entitled, or their solicitors, in accordance with the usual practice of the accountant's office. Payment of money out of court.

(2) No fees or stamps shall be payable on any cheques or on proceedings to pay money into court or to obtain money out of court, in respect of a claim for lien, but suf- Fees.

ficient postage stamps to prepay a return registered letter shall be enclosed with every requisition for cheques. 1923, c. 30, s. 46.

Stated case.

39.—(1) If in the course of proceedings to enforce a lien a question of law arises, the judge or officer trying the case may, at the request of any party, state the question in the form of a stated case for the opinion of the court and the stated case shall thereupon be set down to be heard before a Divisional Court and notice of hearing shall be served by the party setting down upon all parties concerned.

Transmission of to Appellate Division.

(2) The stated case shall set forth the facts material for the determination of the question raised and all papers necessary for the hearing of the appeal shall be transmitted to the registrar of the Appellate Division.

NEW TRIAL AND APPEAL.

Where judgment of court of first instance to be final.

40.—(1) Where the aggregate amount of the claims of the plaintiff and all other persons claiming liens is not more than \$100, the judgment shall be final and without appeal, but the judge or officer who tried the action may, upon application within fourteen days after judgment is pronounced, grant a new trial. 1923, c. 30, s. 39 (1).

Appeal in other cases.

(2) In all other cases an appeal shall lie and may be had in like manner and to the same extent as from the decision of a judge trying an action in the Supreme Court without a jury, and the costs of the appeal shall not be governed by section 42 or section 43, but subject to any order of the Court shall be upon the scale of costs allowed in a division court appeal when the amount involved is not more than \$200, and upon the scale allowed in county court appeals when the amount involved is over \$200 and not more than \$500, and upon the Supreme Court scale when the amount involved is over \$500. 1923, c. 30, s. 39 (2), *part*.

FEEs AND COSTS.

Limit of fees in money or stamps.

41. No fees in stamps or money shall be payable to any judge or officer in any action brought to realize a lien under this Act, nor on any filing, order, record or judgment or other proceeding in such action excepting that every person other than a wage earner shall on filing his statement of claim where he is plaintiff, or on filing his claim where he is not a plaintiff, pay in stamps \$1 on every \$100 or fraction of \$100 of the amount of his claim up to \$1,000, and \$1 on every \$1,000 or fraction of \$1,000 of the amount of his claim over \$1,000. 1923, c. 30, s. 40.

Limit of costs to plaintiff.

42. The costs of the action, exclusive of actual disbursements awarded to the plaintiffs and successful lienholders, shall not exceed in the aggregate twenty-five per centum of

the total amount found to have been actually due on the liens at the time of the registration thereof, and shall be apportioned and borne in such proportion as the judge or officer who tries the action may direct, but in making such apportionment he shall have regard to the actual services rendered by or on behalf of the parties respectively. 1923, c. 30, s. 41.

43. Where costs are awarded against the plaintiff or other persons claiming liens they shall not exceed twenty-five per centum of the claim of the plaintiff and the other claimants, besides actual disbursements, and shall be apportioned and borne as the judge or officer may direct. 1923, c. 30, s. 42.

Limit of costs to be awarded against plaintiffs.

44. Where the least expensive course is not taken by a plaintiff, the costs allowed to him shall in no case exceed what would have been incurred if the least expensive course had been taken. 1923, c. 30, s. 43.

Costs where least expensive course not taken.

45. Where a lien is discharged or vacated under section 25, or where judgment is given in favour of or against a claim for a lien, in addition to the costs of the action, the judge or officer may allow a reasonable amount for the costs of drawing and registering the claim for lien or of vacating the registration thereof, but this shall not apply where the claimant fails to establish a valid lien. 1923, c. 30, s. 44.

Costs of drawing and registering and vacating registration of lien.

46. Except as otherwise herein provided, all costs of and incidental to all applications and orders shall be in the discretion of the judge or officer. 1923, c. 30, s. 45.

Costs not otherwise provided for.

RULES OF PROCEDURE.

47.—(1) The object of this Act being to enforce liens at the least expense, the procedure shall be as far as possible of a summary character, having regard to the amount and nature of the liens in question.

Rules of procedure.

(2) No interlocutory proceedings shall be permitted except such as are provided by this Act, without the consent of the judge or officer having jurisdiction, and then only upon proper proof that such proceedings are necessary. 1923, c. 30, s. 47.

Interlocutory proceedings, when allowed.

LIENS ON CHATTELS.

48.—(1) Every mechanic or other person who has bestowed money or skill and materials upon any chattel or thing in the alteration or improvement of its properties, or for the purpose of imparting an additional value to it so as thereby to be entitled to a lien upon such chattel or thing

Right of mechanics entitled to lien on a chattel to sell chattel.

for the amount or value of the money or skill and materials bestowed shall, while such lien exists but not afterwards, in case the amount to which he is entitled remains unpaid for three months after the same ought to have been paid, have the right in addition to any other remedy to which he may be entitled to sell by auction the chattel or thing, on giving one week's notice by advertisement in a newspaper published in the municipality in which the work was done, or in case there is no newspaper published in such municipality then in the newspaper published nearest thereto, setting forth the name of the person indebted, the amount of the debt, a description of the chattel or thing to be sold, the time and place of sale, and the name of the auctioneer, and leaving a like notice in writing at the last known place of residence if any, of the owner, if he is a resident of such municipality.

Application
of proceeds
of sale.

(2) Such mechanic or other person shall apply the proceeds of the sale in payment of the amount due to him and the costs of advertising and sale and shall, upon application pay over any surplus to the person entitled thereto. 1923, c. 30, s. 48.

SCHEDULE "A."

FORM 1.

(Sections 16-21).

CLAIM FOR LIEN.

A.B. (name of claimant) of (here state residence of claimant), (if claimant is a personal representative or assignee set out the facts) under *The Mechanics' Lien Act* claims a lien upon the estate of (here state the name and residence of owner of the land upon which the lien is claimed), in the undermentioned land in respect of the following work (or service or materials) that is to say (here give a short description of the nature of the work done or to be done, or materials furnished or to be furnished, and for which the lien is claimed) which work (or service) was (or is to be) done (or materials were or are to be furnished) for (here state the name and residence of the person upon whose request the work is done or to be done, or the materials furnished or to be furnished) on or before the
day of 19 .

The amount claimed as due (or to become due) is \$.

The following is the description of the land to be charged (here set out a concise description of the land to be charged sufficient for the purpose of registration).

Where credit has been given, insert: The work was done (or materials were furnished) on credit, and the period of credit agreed to expired (or will expire) on the
day of 19 .

Dated at this day of 19 .
(Signature of claimant)

1923, c. 30. Form 1.

FORM 2.

(Sections 16-21)

CLAIM FOR LIEN FOR WAGES.

A.B. (name of claimant) of (here state residence of claimant), (if claimant is a personal representative or assignee set out the facts) under *The Mechanics' Lien Act* claims a lien upon the estate of (here state the name and residence of owner of the land upon which the lien is claimed), in the undermentioned land in respect of work performed (or to be performed) thereon while in the employment of (here state the name and residence of the person upon whose request the work was or is to be performed) on or before the day of 19 .

The amount claimed as due (or to become due) is \$

The following is the description of the land to be charged (here set out a concise description of the land to be charged sufficient for the purpose of registration).

Dated at this day of 19 .
(Signature of claimant)

1923, c. 30, Form 2.

FORM 3.

(Sections 16-21)

CLAIM FOR LIEN FOR WAGES BY SEVERAL CLAIMANTS.

The following persons claim a lien under *The Mechanics' Lien Act* upon the estate of (here state the name and residence of the owner of land upon which the lien is claimed) in the undermentioned land in respect of wages for labour performed (or to be performed) thereon while in the employment of (here state name and residence or names and residences of employers of the several persons claiming the lien).

A.B. of (residence)	\$		for wages.
C.D. of	"	\$	" "
E.F. of	"	\$	" "

The following is the description of the land to be charged (here set out a concise description of the land to be charged sufficient for the purpose of registration).

Dated at this day of 19 ,
(Signatures of several claimants).

1923, c. 30, Form 3.

FORM 4.

(Sections 16-21)

AFFIDAVIT VERIFYING CLAIM.

I, A.B., named in the above (*or annexed*) claim, make oath that the said claim is true.

Or, We, A.B., and C.D., named in the above (*or annexed*) claim, make oath and each for himself makes oath that the said claim, so far as relates to him, is true.

(*Where affidavit is made by agent or assignee a clause must be added to the following effect:—*I have full knowledge of the facts set forth in the above (*or annexed*) claim.

Sworn before me at _____, in the
County of _____, this _____ day
of _____ 19 _____.

Or, The said A.B. and C.D. were severally
sworn before me at _____, in the
County of _____ this _____ day
of _____, 19 _____.

Or, The said A.B. was sworn before me
at _____, in the County of _____
this _____ day of _____ 19 _____.

1923, c. 30, Form 4.

FORM 5.

(Section 29)

AFFIDAVIT VERIFYING CLAIM ON COMMENCING AN ACTION.

(Style of Court and Cause)

I, _____, make oath and say, that I have read (*or heard read*) the foregoing statement of claim, and that the facts therein set forth are, to the best of my knowledge and belief, true, and the amount claimed to be due to me in respect of my lien is the just and true amount due and owing to me after giving credit for all the sums of money or goods or merchandise to which (*naming the debtor*) is entitled to credit as against me.

Sworn before me, etc.

1923, c. 30, Form 5.

FORM 6.

(Section 35).

NOTICE OF TRIAL.

(Style of Court and Cause.)

Take notice that this action will be tried at the
 in the of , in the County (or District)
 of on the day of by
 and at such time and place the will
 proceed to try the action and all questions as provided by subsection
 3 of section 35 of *The Mechanics' Lien Act*.

And further take notice that if you do not appear at the trial and
 prove your claim, if any, (*or your defence, if any*) to the action,
 the proceedings will be taken in your absence and you may be
 deprived of all benefit of the proceedings and your rights disposed
 of in your absence.

This is a Mechanics' Lien action brought by the above named
 plaintiffs against the above named defendants to enforce a Mechanics'
 Lien against the following lands:—(*set out description of lands*).

This notice is served by, etc.

Dated

19

To

1923, c. 30, Form 6.

FORM 7.

(Section 35).

JUDGMENT.

In the Supreme Court of Ontario,

Monday, the

day of

19

Name of Judge or Officer:

William Spencer, Plaintiff,

and

Thomas Burns, Defendant.

This action coming on for trial before at
 upon opening of the matter and it appearing that the following
 persons have been duly served with notice of trial herein, (*set out
 names of all persons served with notice of trial*) and all such persons
 (*or as the case may be*) appearing at the trial (*or and the following
 persons not having appeared set out names of non-appearing persons*)
 and upon hearing the evidence adduced and what was alleged
 by counsel for the plaintiff and for C.D. and E.F. and the defendant
 (*or and by A.B. appearing in person*).

1. This court doth declare that the plaintiff and the several persons
 mentioned in the first Schedule hereto are respectively entitled to a
 lien under *The Mechanics' Lien Act* upon the land described in the

second Schedule hereto for the amounts set opposite their respective names in the 2nd, 3rd and 4th columns of the said first Schedule, and the persons primarily liable for the said claims respectively are set forth in the 5th column of the said Schedule.

2. (And this court doth further declare that the several persons mentioned in Schedule 3 hereto are also entitled to some lien, charge or incumbrance upon the said land for the amounts set opposite their respective names in the 4th column of the said Schedule 3, *according to the facts*).

3. And this court doth further order and adjudge that upon the defendant (A.B., the owner) paying into court to the credit of this action the sum of _____ (*gross amount of liens in Schedules 1 and 3 for which owner is liable*) on or before the day of _____ next, that the said liens in the said first Schedule mentioned be and the same are hereby discharged, (and the several persons in the said third Schedule are to release and discharge their said claims and assign and convey the said premises to the defendant (*owner*) and deliver up all documents on oath to the said defendant (*owner*) or to whom he may appoint) and the said money so paid into court is to be paid out in payment of the claims of the said lienholders (*or and incumbrances*).

4. In case the said defendant (*owner*) shall make default in payment of the said money into court this court doth order and adjudge that the said land be sold with the approbation of the Master of this court at _____ and that the purchase money be paid into court to the credit of this action, and that all proper parties do join in the conveyances as the said Master shall direct.

5. And this court doth order and adjudge that the said purchase money be applied in or towards payment of the several claims in the said first (and third) Schedule (s) mentioned as the said Master shall direct, with subsequent interest and subsequent costs to be computed and taxed by the said Master.

6. And this court doth further order and adjudge that in case the said purchase money shall be insufficient to pay in full the claims of the several persons mentioned in the said first Schedule, the persons primarily liable for such claim as shown in the first Schedule do pay to the persons to whom they are respectively primarily liable the amount remaining due to such persons forthwith after the same shall have been ascertained by the said Master.

7. (And this court doth declare that _____ have not proved any lien under *The Mechanics' Lien Act* and that they are not entitled to any such lien, and this court doth order and adjudge that the claims of liens registered by them against the land mentioned in the second Schedule be and the same are hereby discharged, *according to the fact*.)

SCHEDULE 1.

Names of lien-holders entitled to mechanics' liens.	Amount of debt and interest (if any).	Costs	Total	Names of primary debtors.

(Signature of officer).

1923, c. 30, Schedule 1.

SCHEDULE 2.

The lands in question in this matter are

(Set out a description sufficient for registration purposes).

(Signature of officer).

1923, c. 30, Schedule 2.

SCHEDULE 3.

Names of persons entitled to incumbrances other than mechanics' liens.	Amount of debt and interest (if any)	Costs	Total

(Signature of officer).

1923, c. 30, Schedule 3.

CHAPTER 174.

The Woodman's Lien for Wages Act.

Application
of Act.

1. This Act shall apply only to the Provisional County of Haliburton and to the provisional judicial districts. R.S.O. 1914, c. 141, s. 2.

Interpreta-
tion.

2. In this Act,

"Bailiff."

(a) "Bailiff" shall include a constable who under *The Division Courts Act* may execute an attachment or perform other service;

Rev. Stat.
c. 95.

"Labour."

(b) "Labour" shall mean and include cutting, skidding, felling, hauling, scaling, banking, driving, running, rafting or booming any logs or timber, and any work done by cooks, blacksmiths, artisans and others usually employed in connection therewith;

"Logs or
timber."

(c) "Logs or timber" shall mean and include logs, cordwood, timber, cedar posts, telegraph poles, railroad ties, tan bark, pulpwood, shingle bolts and staves or any of them. R.S.O. 1914, c. 141, s. 3.

Proceedings
in Provi-
sional
County of
Haliburton.

3. Wherever in this Act any act is required to be done by, or any paper to be filed or proceedings taken in the office of the clerk of the district court of a district, or jurisdiction is conferred upon a district court or the judge thereof, the like acts may be done, papers filed and proceedings taken by and in the office of the clerk of the county court of the County of Victoria, and the like jurisdiction may be exercised by that court or a judge thereof in respect of matters arising in the Provisional County of Haliburton. R.S.O. 1914, c. 141, s. 4.

Contracts
waiving
application
of Act to
be void.

4.—(1) Every agreement, verbal or written, express or implied, on the part of any person employed in labour that this Act shall not apply, or that the remedies provided by it shall not be available for the benefit of such person, shall be null and void.

Exceptions.

(2) This section shall not apply to any manager, officer or foreman, or to any person whose wages are more than \$3 a day. R.S.O. 1914, c. 141, s. 5.

5.—(1) A person performing labour shall have a lien upon the logs or timber in connection with which the labour is performed for the amount due for such labour, and the same shall have precedence over all other claims or liens thereon, except a claim or lien of the Crown for any dues or charges or which a timber slide company or any owner of a slide or boom may have thereon for tolls.

Lien for labour on logs or timber.

(2) A contractor who has entered into any agreement under the terms of which he himself or by others in his employ has cut, removed, taken out or driven logs or timber, shall be deemed to be a person performing labour upon logs or timber within the meaning of this section, and such cutting, removal, taking out and driving shall be deemed to be the performance of labour within the meaning of this section.

Contractors, with respect to labour or services to be performed on timber got out for export.

6. The lien shall cease unless the claim therefor is filed and proceedings are taken to enforce the same as hereinafter provided. R.S.O. 1914, c. 141, s. 7.

Lien to cease unless proceedings taken.

7.—(1) The person claiming the lien shall state his claim in writing (Form 1), setting out briefly the nature of the claim, the amount claimed to be due and a description of the logs or timber upon which the lien is claimed.

Claim of lien to be filed.

(2) The claim shall be verified by the affidavit of the claimant, his solicitor or agent.

Verified by affidavit.

(3) In the case of a contractor coming within the provisions of subsection 2 of section 5 the claim and affidavit shall be filed on or before the 1st day of September next following the performing of the labour.

Time for filing claim.

Contractors.

(4) In other cases, if the labour was performed between the 1st day of October and the 1st day of April next thereafter, the claim shall be filed on or before the 30th day of the same month of April, but if the labour was performed on or after the 1st day of April and before the 1st day of October in any year the claim shall be filed within thirty days after the last day on which such labour or any part thereof was performed. R.S.O. 1914, c. 141, s. 8.

Wage-earners.

8.—(1) Except as hereinafter provided the claim and affidavit shall be filed in the office of the district court of the provisional judicial district in which the labour or some part thereof was performed.

Place for filing claim.

(2) Where the labour was performed upon logs or timber got out to be run down or which have been run down any of the rivers or streams flowing into the Georgian Bay, Lake Huron, Lake Superior, Lake of the Woods, Rainy Lake or Rainy River or Pigeon River, the claim may, at the option of the claimant, be filed in the office of the clerk of the

Where labour performed in certain localities.

district court of the district in which the labour was performed or in the office of the clerk of the district court of the district in which the drive terminates or reaches the waters of such bay, lake or river.

In Hali-
burton.

(3) Where the labour or some part of it was performed in the Provisional County of Haliburton the claim may be filed in the office of the clerk of the county court of the County of Victoria. R.S.O. 1914, c. 141, s. 9.

Sale not to
affect lien.

9. No sale or transfer of the logs or timber during the time limited for the filing of the claim and previous to the filing thereof, or after the filing thereof and during the time limited for the enforcement thereof, shall affect the lien but the same shall remain in force against such logs and timber in whosoever possession the same shall be found. R.S.O. 1914, c. 141, s. 10.

Enforcement
of liens by
suit in
district or
division
courts.

10.—(1) Any person having a lien upon logs or timber may enforce the same by suit, where the claim does not exceed \$200, in the division court within whose jurisdiction the logs or timber or any part thereof may be at the time of the commencement of the suit, or, where the claim exceeds \$200, in the proper district court where the claim is filed, and such suit may be commenced to enforce such lien, if the claim is then payable, immediately after the filing of the claim, or, if credit has been given, immediately after the expiry of the period of credit, and such lien shall cease unless the proceedings to enforce the same are commenced within thirty days after the filing of the claim or after the expiry of the period of credit.

Defendant.

(2) In all such suits the person liable for the payment of the claim shall be made the party defendant.

On whom
writ to be
served.

(3) Where the defendant is not the owner of the logs a copy of the writ shall be served on the owner as well as the defendant, or the person or agent in whose possession, custody or control they may be found, or the person in charge of the operations in respect of which the claim of lien arose.

Owner may
be made
defendant.

(4) The owner may, on his own application, or by direction of the judge, be made a party defendant. R.S.O. 1914, c. 141, s. 11.

Procedure.

11.—(1) There shall be attached to or endorsed upon the writ or summons a copy of the claim filed, and no statement of claim shall be necessary unless ordered, and no pleading or notice of dispute or defence other than such as is required in a suit or proceeding in a division court shall be necessary whether the suit is brought in a district or in a division court.

Where no de-
fence filed.

(2) Where no dispute or defence is filed judgment may be signed and execution issued.

(3) The court or judge may order particulars to be given or amendments to be made, or may add or strike out the names of parties and may set aside judgment and permit a dispute or defence to be filed, on such terms as may appear just. Powers of court.

(4) The writ or summons shall be in the form, as nearly as may be, of that in use in the court in which it is issued, but the practice thereafter shall follow as nearly as may be that of the division court. Form of writ and practice.

(5) A writ or summons may be served anywhere in Ontario in the same manner as in other cases. Service of process.

(6) The judgment shall declare that the same is for wages, the amount thereof and costs, and that the plaintiff has a lien therefor on the property described when such is the case. Form of judgment.
R.S.O. 1914, c. 141, s. 12.

12. Where an execution has been placed in the hands of a sheriff or bailiff for execution, and no attachment has been issued, the proceedings for the enforcement of the lien shall be by sale under the execution, and the proceedings relating to proof of other claims and the payment of money into court and the distribution of the money and otherwise shall, as far as practicable, be the same as is hereinafter provided for proceedings upon and subsequent to an attachment. R.S.O. 1914, c. 141, s. 13. Procedure subsequent to execution in certain cases.

13.—(1) Where an attachment issues in the first instance the statement of claim and defence and proceedings to judgment shall be the same as where a suit has been begun by writ or summons. Procedure attachment in first instance.

(2) Where an attachment issues after proceedings have been commenced by writ or summons the proceedings, except such as are necessary to be taken under the attachment, shall be carried to judgment under the writ of summons. R.S.O. 1914, c. 141, s. 14. Where attachment after action.

14. The forms of attachment shall be as nearly as may be the same as are in use in the district courts or in the division courts. R.S.O. 1914, c. 141, s. 15. Form of attachment.

15.—(1) Whether the proceedings are commenced by writ or summons or attachment the judge may direct that the same shall be disposed of summarily by him without waiting for the regular sittings of the court, upon such terms as to notice and otherwise as he may deem proper, and the same may be so disposed of. Summary disposal of cases.

(2) The judge may set aside an attachment or seizure or direct the release of logs or timber that have been seized on such terms as he may deem proper. R.S.O. 1914, c. 141, s. 16. Powers of judge.

When attachment to issue from division court.

16. Where the amount of the claim does not exceed \$200, and is not less than \$10, upon the production and filing of a copy of the claim and affidavit and an affidavit of the claimant verifying the claim, and showing that the same has been filed and stating that

- (a) he has good reason to believe and does believe that the logs or timber are about to be removed out of Ontario; or
- (b) that the person indebted has absconded from Ontario with intent to defraud or defeat his creditors; or
- (c) that the logs or timber are about to be cut into lumber or other timber so that the same cannot be identified; and
- (d) that he is in danger of losing his claim if attachment does not issue,

Rev. Stat.
c. 95.

and if affidavits of two persons corroborating the affidavit of the plaintiff in respect of clauses *a*, *b* or *c* are also filed the clerk of the proper division court shall issue a warrant, as in the case of an attachment under section 192 of *The Division Courts Act*, directed to the bailiff of the division court commanding such bailiff to attach, seize, take and safely keep such logs or timber or a sufficient part thereof to satisfy the amount claimed and the costs of the suit and of the proceedings to enforce the lien, and to return the warrant forthwith to the court out of which the same issued. R.S.O. 1914, c. 141, s. 17.

When attachment to issue out of district court.

17.—(1) Where the amount claimed exceeds \$200, upon the filing of a copy of the claim and affidavit, the clerk of the district court of the district where the action may be brought, upon the filing of an affidavit made by the claimant showing such facts as would authorize the issue of an attachment under the next preceding section and such affidavit in corroboration as is provided in the next preceding section, shall issue a writ of attachment directed to the sheriff of the district commanding him to attach, seize and take and safely keep the logs or timber or a sufficient part thereof to satisfy the amount claimed and the costs of the suit and of the proceedings to enforce the lien.

Subsequent seizure.

(2) Where additional claims are made, or the amount of the claim is increased or a sufficient seizure has not been made, a second or subsequent seizure may be made either under the execution or attachment. R.S.O. 1914, c. 141, s. 18.

Warrant or writ to be served on defendant and the owner of logs.

18.—(1) The warrant or writ of attachment shall also, where no writ or summons has issued, summon the defendant to appear before the district court or division court out of which the attachment issued, and a copy of the writ of attachment shall be served upon the defendant, and, if the defendant

is not the owner of the logs or timber described in the warrant or writ, a copy of the warrant or writ of attachment shall also be served upon the owner of the logs or timber or upon the person or agent in whose possession, custody or control they may be found.

(2) When a warrant or writ is served upon a person in possession an order of the judge allowing the service shall be necessary. When order allowing service necessary.

(3) Where the defendant or the owner of the logs or timber cannot be found within the district, and there is no one in possession of the logs or timber, a copy of the warrant or writ may be forwarded to the sheriff of any county or district or the bailiff of any division court within whose jurisdiction the defendant or the owner resides or may be found, and such copy may be served by the sheriff or the bailiff upon the defendant or the owner. Service where no one in possession of logs.

(4) The owner may, on his own application or by direction of the judge, be made a party defendant. Owner may be made a party.

(5) If the defendant or the owner cannot be found within Ontario or the owner cannot be ascertained, and no person is in possession of the logs or timber, the warrant or writ may be served in such manner as the judge directs. When defendant or owner not in Province, etc.

(6) Notwithstanding that a defence has not been entered the judge may admit the defendant and the owner or either of them to make full defence upon such terms as he may deem just. R.S.O. 1914, c. 141, s. 19. Admission of parties to make defence.

19. A sheriff or bailiff shall not seize or detain under a warrant or writ of attachment any logs or timber when in transit from the place where cut to the place of destination when such place of destination is within the district in which the proceedings were commenced, but if such logs or timber are so in transit, or are in the possession of any person for the purpose of being driven or sorted and delivered to the owner, or to satisfy any statutory lien, attachment of the logs or timber may be made by serving a copy of the warrant or writ upon the person in whose possession, custody or control they are, who shall from the time of such service hold the same, both on his own behalf and for the sheriff or bailiff to the extent of the lien, until the logs or timber have reached their place of destination or are driven or sorted, as the case may be, and when they have reached their place of destination or are driven or sorted the sheriff or bailiff may receive the logs or timber from such person, and the statutory lien of such person shall not be released by the holding of such sheriff or bailiff. R.S.O. 1914, c. 141, s. 20. Logs or timber in transit within district not to be detained.

20. The claimant or the plaintiff, and the sheriff or bailiff may, by leave of the judge, take any proceedings which the owner of any logs or timber may take under *The Lakes and* Separation of logs.

Rev. Stat.
c. 43.

Rivers Improvement Act for the purpose of procuring the separation of any logs or timber so seized by the sheriff or bailiff under this Act from other logs or timber with which they have become intermixed, or a sale may be made without such separation if the judge so directs. R.S.O. 1914, c. 141, s. 21.

Sheriff or
bailiff to
restore pos-
session upon
execution of
bond.

21. In case of an attachment, if the owner of the logs or timber or any person on his behalf executes and files with the clerk of the court out of which the attachment issued a good and sufficient bond to the person claiming the lien, executed by two sureties and approved by the clerk conditioned for the payment of the claim and of all damages, costs, charges, disbursements and expenses that may be recovered by the claimant in such proceedings, together with the amount for which a lien is claimed in any other suit, the clerk shall issue an order to the sheriff or bailiff having in charge the logs or timber directing their release, and upon service of such order upon the sheriff or bailiff he shall release the same. R.S.O. 1914, c. 141, s. 22.

Notice of
dispute.

22.—(1) Any person who has been served with a copy of the warrant or writ of attachment and who desires to dispute the claim shall, within fourteen days after such service, enter in the court in which proceedings are pending a notice that he disputes the claim in whole or in part.

If no notice
of dispute
entered judg-
ment may be
entered.

(2) If no notice of dispute is entered judgment may be entered as in the case of default, and the practice and procedure shall be the same as in a suit begun by writ or summons. R.S.O. 1914, c. 141, s. 23.

Persons
served with
attachment
may pay
amount
claimed
into court.

23.—(1) The defendant may, at any time before the sale of the logs or timber, pay into court the amount for which the lien is claimed, together with the amount for which a lien is claimed in any other suit, and also the costs of the proceedings to the date of such payment to be taxed by the clerk of the court if required, and shall thereupon be entitled to a certificate vacating the liens.

Subsequent
procedure.

(2) Upon such certificate being filed with the clerk of the court in which the claim was filed the liens shall be vacated and all further proceedings thereon shall cease, and the defendant shall be entitled to an order directing the delivery up of the logs or timber seized under the attachment, or the cancellation of any bond given under section 21. R.S.O. 1914, c. 141, s. 24.

Day to be
fixed by
advertisement
for hearing.

24.—(1) After the expiration of the time within which a notice of dispute may be entered the judge shall, upon the application of the plaintiff, appoint a day upon which all persons claiming a lien on the logs or timber shall appear before him for the adjustment of their claims and the settlement of accounts.

(2) The appointment shall be served upon the defendants and upon the owner, if the judge so directs, and shall also, if the judge so directs, be published once a week for two weeks before the day appointed in a newspaper having a general circulation in the district in which proceedings are pending.

Service of appointment and advertisement.

(3) A copy of the appointment shall also be sent by registered post to every claimant known to the plaintiff and to the Minister of Lands and Forests, at least two weeks before the day appointed, directed to the post office address of such claimant where the same is known, and if not known then to his last known address. R.S.O. 1914, c. 141, s. 25.

Notification of lien-holders and the Minister.

25.—(1) Upon the day named in the appointment the persons served with a copy thereof, and all other persons claiming a lien on the logs or timber who have prior to that date filed with the clerk a notice claiming a lien on the logs or timber and stating the nature and amount of their claims, shall attend before the judge.

Parties filing notices of disputes or claims to attend on day named in appointment.

(2) Where a claim is brought in pursuant to the notice it may be established *prima facie* by affidavit, but any person interested may cross-examine a deponent, and may require that the claim be established as in other cases.

Proof of claims.

(3) The judge shall hear all parties and take all accounts necessary to determine the amounts due to the claimants, and shall tax costs, and determine by whom the same shall be paid, and settle priorities and generally determine all such matters as may be necessary for the adjustment of the rights of all parties. R.S.O. 1914, c. 141, s. 26.

Judge to hear all parties, take accounts, etc.

26.—(1) At the conclusion of the enquiry the judge shall make his report and order which shall state his findings and direct the payment into court within ten days thereafter of the amounts found due and the costs, and, in default of payment, that the logs or timber shall be sold by the sheriff or bailiff for the satisfaction thereof.

Order to be made by judge at conclusion of enquiry.

(2) In default of payment into court within the time named in the order the logs or timber shall, within twenty days thereafter, be sold by the sheriff or bailiff in the same manner and subject to the same provisions of law as goods seized or taken in execution, or after such additional publicity has been given to the sale as the judge may direct.

In default of payment into court logs or timber to be sold.

(3) The amount realized by the sale shall, after deducting the expenses thereof, and the fees and poundage of the sheriff or bailiff, be paid into court and shall be paid out by the clerk to the parties entitled thereto under the order of the judge.

Application proceeds of sale.

(4) Where the amount realized upon the sale is not sufficient to pay the claims and costs in full the judge shall apportion the amount realized *pro rata* among the claimants.

Judge to apportion.

Certificate of balance due after distribution to be entered as a judgment.

(5) Where after sale and distribution any balance remains due to any person under the order of the judge the clerk shall, upon application of such person, give to him a certificate that such amount remains due, and such certificate may be entered as a judgment in the district court or division court having jurisdiction against the person by whom the claim is directed to be paid, and execution may be issued thereupon. R.S.O. 1914, c. 141, s. 27.

Where nothing found due on enquiry, lien to be discharged.

27. Where nothing is found due upon the several claims filed or upon the lien with respect to which proceedings have been taken the judge may order that the lien be discharged and the logs or timber released or the security given therefor delivered up and cancelled, and may order payment of any costs which may be found due to the defendant or the owner of the logs or timber. R.S.O. 1914, c. 141, s. 28.

Costs.

28.—(1) Where the taxed costs, exclusive of necessary disbursements, which are payable out of the amount realized for the satisfaction of the lien exceed twenty-five per centum of the amount realized such costs, upon application by any party, may be reduced by the judge so that the same shall not in the aggregate exceed twenty-five per centum and no more costs than such reduced amount shall be recovered between party and party or solicitor and client.

Limit of where claim not contested.

(2) The costs in addition to actual and necessary disbursements which may be taxed to any claimant proving an uncontested claim shall not exceed \$5 if a solicitor is employed, and where the amount claimed is within the jurisdiction of the division court shall not exceed \$2 where a solicitor is employed.

Where claim contested.

(3) In case of a contest, where a solicitor is employed, the judge may allow such costs, not exceeding in any case \$10 when taxed on the district court scale or \$5 when taxed on the division court scale, in addition to actual and necessary disbursements, but where the claim does not exceed \$50 then such costs shall not exceed \$3.

Tariff.

(4) Subject to the provisions of this section the costs to be taxed to any party shall, as far as possible, be according to the tariff of costs in force as to other proceedings in the court in which proceedings under this Act have been taken. R.S.O. 1914, c. 141, s. 29.

Disposition of balance after sale and satisfaction of liens.

29.—(1) Where money paid into court as the proceeds of the sale of logs or timber is more than sufficient to satisfy the claims which have been proved with interest and costs the judge, upon the application of any creditor within thirty days from the day fixed by the order for payment, shall order that such remaining money be paid over to the sheriff who

shall hold and distribute the same as provided by *The Creditors' Relief Act* in the case of money levied under execution, and all parties having claims may take the like proceedings as those provided by *The Creditors' Relief Act* for proving claims and obtaining certificates or executions. Rev. Stat. c. 113.

(2) If no such application is made to the judge within such period of thirty days the judge may order payment out of court of any remaining money to the person entitled thereto. Order for payment. R.S.O. 1914, c. 141, s. 30.

30. Any person affected by proceedings taken under this Act may apply to the judge to dismiss the same for want of prosecution, and the judge may make such order upon the application as he may deem just. Dismissal of proceedings for want of prosecution. R.S.O. 1914, c. 141, s. 31.

31.—(1) Nothing in this Act shall deprive any person of any other remedy to which he may be entitled for the recovery of any amount due in respect of labour performed upon or in connection with any logs or timber. Other remedies not affected.

(2) Where an action is brought to enforce a lien, but no lien is found to exist in respect of the claim, judgment may be given for any amount found due as in an ordinary action. Where lien not established, judgment for amount found due. R.S.O. 1914, c. 141, s. 32.

32. Any number of lien holders may join in taking proceedings under this Act, or may assign their claims to any one or more persons, but the claim to be filed under section 7 shall include particular statements of the several claims joined which shall be verified by the affidavits of the persons so joining, or separate claims may be filed and one writ, summons or attachment issued on behalf of all the persons so joining. Any number of lien holders may join in proceedings. R.S.O. 1914, c. 141, s. 33.

33. Where proceedings have been commenced in the district court and proceedings are brought or are thereafter pending in respect of the same logs or timber, or any part of them, in a division court the judge may order the proceedings in the division court to be adjourned before him, and shall in his inquiry include the claims in respect of which proceedings are pending in the division court, and thereafter all persons who have filed claims in the division court shall be entitled to prove their claims and to share in the benefit of the proceedings in the district court. Transfer of suit from division court in case proceedings taken in district court. R.S.O. 1914, c. 141, s. 34.

34. Where suits are brought in several district courts, or in several division courts, the procedure under sections 24 to 26 shall be had in the district or division court out of which an execution or attachment first issued, unless the judge of such court shall otherwise order. Where suits in several courts. R.S.O. 1914, c. 141, s. 35.

Practice.

35. The practice and procedure in actions brought in the district courts or in division courts, shall, so far as they are not inconsistent with this Act, apply to proceedings taken under this Act. R.S.O. 1914, c. 141, s. 36.

Liability for loss occasioned by improper seizure.

36. Any person who unlawfully and maliciously, and without reasonable and probable cause, takes, or causes to be taken, proceedings under this Act by which logs or timber are seized, detained or sold shall be liable therefor in an action at the suit of any person aggrieved thereby, and shall also be liable for all loss and damage occasioned by such seizure by reason of such logs or timber breaking away or being scattered or lost, or otherwise. R.S.O. 1914, c. 141, s. 37.

Illegal payments.

37.—(1) No payment of wages shall be made or offered to any person for any labour performed upon or in connection with any logs or timber by any cheque, order, I.O.U., bill of exchange, promissory note, or other undertaking, other than a bank note or bill, drawn upon or payable at or within any place out of Ontario.

Penalties.

(2) Any person violating, or who shall direct or knowingly suffer his agent or servant to violate, the provisions of this section shall incur a penalty of not less than \$5 and not more than \$20, to be recovered under the provisions of *The Summary Convictions Act*. R.S.O. 1914, c. 141, s. 38.

Rev. Stat. c. 121.

Illegal payments not to be allowed as a defence in any action.

38. No payment made or offered to be made in violation of section 37 shall be a defence to an action or proceeding for the recovery of wages, or be receivable in evidence therein, nor shall any such payment or offer of payment in any way affect any claim of lien for labour on logs or timber under this Act, but in case of the sale, or transfer of any instrument mentioned in section 37, in whole or in part, by the payee the consideration received by him shall be treated as payment on account. R.S.O. 1914, c. 141, s. 39.

Form of proceedings.

39. The judges of the district courts, or a majority of them, may prepare and adopt forms of writs, summonses, attachments and other forms for the more convenient carrying out of the provisions of this Act, and thereafter the same shall be used instead of the forms prescribed by this Act. R.S.O. 1914, c. 141, s. 40.

FORM 1.

(Section 7.)

CLAIM OF LIEN.

A. B., (name of claimant) of (state residence of claimant), (if claim made as assignee then say as assignee of giving name and address of assignor) under *The Woodman's Lien for Wages Act*, claims a lien upon certain logs or timber of (here state the name and residence of the owner of logs or timber upon which the lien is claimed if known) which logs and timber are composed of (state the kinds of logs and timber such as pine sawlogs, cedar or other posts or railway ties, shingle bolts or staves, etc., also where situate at time of filing of claim) in respect of the following work, that is to say, (here give a short description of the work done for which the lien is claimed) which work was done for (here state the name and residence of the person upon whose credit the work was done) between the day of and the day of at per (month or day as the case may be).

The amount claimed as due (or to become due) is the sum of (and when credit has been given, the said work was done on credit, and the period of credit will expire on the day of).

Dated at this day of 19 .

(Signature of Claimant).

AFFIDAVIT TO BE ATTACHED TO CLAIM.

I make oath and say that I have read (or have heard read) the foregoing claim, and that the facts therein set forth are, to the best of my knowledge and belief, true, and that the amount claimed to be due to me in respect of my lien is the just and true amount due and owing to me after giving credit for all sums of money, goods or merchandise to which the said (naming the debtor) is entitled to credit.

Sworn before me at in the district }
of this day of , 19 . }
A Commissioner.

R.S.O. 1914, c. 141, Form 1.

CHAPTER 175.

The Public and Other Works Wages Act.

Payment of wages of employees of contractors with the Crown or their sub-contractors.

1. If any contractor with His Majesty, or any sub-contractor in the construction of any public work let under contract by His Majesty, makes default in the payment of the wages of any foreman, workman or labourer employed on such work, or in the payment of any sum due by him for the labour of any such foreman, workman or labourer, or of any team employed on such work, and if a claim therefor is filed in the office of the Minister entering into such contract on behalf of His Majesty, not later than two months after the same becomes due, and satisfactory proof thereof is furnished, His Majesty may pay such claim to the extent of the amount of all moneys or securities in the hands of His Majesty for securing the performance of the contract at the time of the filing of the claim. R.S.O. 1914, c. 142, s. 2.

Out of what payable.

List of employees, etc., to be furnished when required.

2. The Minister may, in writing, require any such contractor or sub-contractor to file in the office of the Minister, not later than the fifteenth day of each month, a list showing the names, rates of wages, amounts paid and amounts due and unpaid for wages or labour done by any foreman, workman, labourer or team employed by the contractor or sub-contractor during the previous month, and such list shall be attested upon the oath of the contractor or sub-contractor or his authorized agent. R.S.O. 1914, c. 142, s. 3.

Penalty for failure to furnish list.

3.—(1) Every contractor or sub-contractor who makes default in forwarding such list shall incur a penalty of not less than \$10 or more than \$100 for every day during which default continues.

How penalty enforceable.

(2) The amount of such penalty, within the above limits, shall be determined by the Minister under whom the work is being executed, and may be deducted out of the money in the hands of the Crown deposited by or owing to such contractor and shall be vested in His Majesty. R.S.O. 1914, c. 142, s. 4.

Case of default by sub-contractor.

4. Where default is made by a sub-contractor in furnishing such list the penalty for such default, hereinbefore provided, may also be recovered, with costs, at the suit of the Crown in any court of competent jurisdiction. R.S.O. 1914, c. 142, s. 5.

SUBSIDIZED WORKS.

5.—(1) Where any subsidy, advance, loan or bonus of money is authorized by this Legislature to be granted to any company or person towards the construction of any railway or other work it shall, in the absence of special provision by this Legislature to the contrary, be a condition of the grant that so much of the money may be retained as the Lieutenant-Governor in Council may think proper to secure the payment of claims for wages of persons employed on such railway or work whether by such company or by any contractor or sub-contractor, or for sums due or to become due for labour of persons or teams so employed.

Retaining portion of legislative grant and paying wages, etc., thereout.

(2) If any such claim remains unpaid for thirty days after notice thereof has been served upon the Minister charged with the duty of seeing that the conditions upon which such aid is granted are duly carried out the Lieutenant-Governor in Council may, on being satisfied that such claim is due and unpaid, direct that it be paid together with all proper costs and charges in connection therewith out of any moneys so retained. R.S.O. 1914, c. 142, s. 6.

When to be paid.

WORKS BY CHARTERED COMPANIES.

6.—(1) Every company incorporated under any Act of this Legislature shall be liable for the payment of the wages of the foremen, workmen, labourers or teams employed in the construction of any work in Ontario done by or for the company, whether directly under the company or through the intervention of any contractor or sub-contractor.

Liability of companies for wages due by contractors, etc.

(2) Nothing herein shall prejudice or affect the right of any person against any contractor or sub-contractor with whom he has contracted under any other Act or law in force in Ontario. R.S.O. 1914, c. 142, s. 7.

Saving of other rights.

7.—(1) Where any such foreman, workman or labourer is not paid his wages for himself or his team by any contractor or sub-contractor by whom he has been employed a notice stating the name of the claimant and the amount of wages claimed, the rate of such wages, the nature and amount of work done, the time when, the place where, and the name of the contractor or sub-contractor, superintendent or foreman under whom such work was done, may be served upon the company not later than two months after such wages are earned.

Notice of unpaid wages.

(2) The notice shall be followed up by the commencement of a suit in a court of competent jurisdiction for the collection of such wages within thirty days after the service of

Limitation of time for action.

such notice, otherwise the liability mentioned in the last preceding section shall cease.

Service of
notice or
process.

(3) The notice mentioned in subsection 1, and any summons, notice, order or other process required to be served upon the company for the prosecution of such claim, may be served upon the president, vice-president, secretary, managing director, superintendent, or engineer, or any recognized officer representing the company, or by leaving it with any adult person at the office or residence of any of them. R.S.O. 1914, c. 142, s. 8.

CHAPTER 176.

The Wages Act.

1. In this Act,

“Wages” shall mean and include wages and salary whether the employment in respect of which the same is payable is by time or by the job or piece or otherwise. R.S.O. 1914, c. 143, s. 2.

Interpretation.

“Wages.”

2. Where an assignment is made for the general benefit of creditors of any real or personal property the assignee shall pay, in priority to the claims of the ordinary or general creditors of the assignor, the wages of all persons in the employment of the assignor at the time of the making of the assignment, or within one month before the making thereof, not exceeding three months' wages, and such persons shall rank as ordinary or general creditors for the residue, if any, of their claims. R.S.O. 1914, c. 143, s. 3.

Priority of wages or salaries in case of assignments for benefit of creditors.

To what extent.

[As to wages in case of winding up a company see *The Companies Act, Rev. Stat. c. 218.*]

3. All persons who, at the time of the seizure by the sheriff or who within one month previous thereto, have been in the employment of the execution debtor, and who shall become entitled to share in the distribution of money levied out of the property of a debtor within the meaning of *The Creditors Relief Act* shall be entitled to be paid out of such money the wages due to them by the execution debtor, not exceeding three months' wages, in priority to the claims of the other creditors of the execution debtor, and shall be entitled to share *pro rata* with such other creditors as to the residue, if any, of their claims. R.S.O. 1914, c. 143, s. 4.

Priority over execution creditors.

Rev. Stat. c. 113.

To what extent.

4. All persons in the employment of an absconding debtor at the time of a seizure by the sheriff under *The Absconding Debtors' Act*, or within one month previous thereto, shall be entitled to be paid by the sheriff, out of any moneys realized out of the property of the debtor, the wages due to them by the debtor, not exceeding three months' wages, in priority to the claims of the other creditors of the debtor, and shall be entitled to share *pro rata* with such other creditors as to the residue, if any, of their claims. R.S.O. 1914, c. 143, s. 5.

Priority in case of attachment.

Rev. Stat. c. 114.

To what extent.

Priority in
administration
of estates.

5. In the administration of the estate of any person dying on or after the 13th day of April, 1897, any person in the employment of the deceased at the time of his death, or within one month previous thereto, who is entitled to share in the distribution of the estate, shall be entitled to his wages, not exceeding three months thereof, in priority to the claims of the ordinary or general creditors of the deceased, and such person shall be entitled to rank as an ordinary or general creditor of the deceased for the residue, if any, of his claim. R.S.O. 1914, c. 143, s. 6.

To what
extent.

When wages
to be payable
on distribu-
tion of estate.

6.—(1) Wages in respect of which priority is herein conferred shall become due and be payable by the assignee, liquidator, sheriff, executor, administrator or other person charged with the duty of winding up or distributing the estate within one month from the time when the estate has been received by him or placed under his control, unless it appears to him that the estate is not of sufficient value to pay the claims or charges thereon having by law priority over the claims for wages and the ordinary expenses and disbursements of winding up and distributing the estate.

Ordinary
expenses,
meaning of.

(2) Ordinary expenses shall not include the cost of litigation or other unusual expenses concerning the estate or any part thereof unless the same were incurred with the consent in writing of the person entitled to the wages or are afterwards adopted or ratified by him in writing.

Protection of
assignee, etc.,
paying claims
for wages in
good faith.

(3) Any such assignee, liquidator, sheriff, executor, administrator or other person may forthwith, upon such estate coming to his hands, pay the prior claims for wages without being chargeable in case it shall in the end appear that the estate was insufficient to have justified such payment, provided he has acted in good faith and has reasonable grounds to believe that the estate would prove sufficient.

Joinder
of claims.

(4) Any number of claimants in respect of such prior claims for wages upon the same estate may join in any action, suit or other proceeding for the enforcement of their claims. R.S.O. 1914, c. 143, s. 8.

[As to wages payable to employees of contractors for public works, see The Public and other Works Wages Act, Rev. Stat. c. 175.]

Extent of
exemption
from seizure
or attach-
ment.

7.—(1) Seventy per centum of any debt due or accruing due to any mechanic, workman, labourer, servant, clerk or employee for or in respect of his wages shall be exempt from seizure or attachment, provided however, that if a creditor of any such mechanic, workman, labourer, servant, clerk or employee, who has initiated proceedings by way of seizure or attachment of the wages of any such mechanic, workman, labourer, servant, clerk or employee, desires to contend that

having regard to the nature of the debt and the circumstances of the debtor, it is unreasonable that as much as seventy per centum of such debtor's wages should be exempt, the judge may, upon a hearing of the matter reduce the percentage of exemption herein allowed in any particular case, and provided further, that this section shall only apply where the amount of such exemption exceeds \$15 and that a portion of such debtor's wages not exceeding \$15 shall in all cases be exempt from seizure or attachment. 1920, c. 42, s. 2, *part*; 1927, c. 45, s. 2 (1).

Proviso.
Reduction
of exemp-
tion.

(2) Nothing in this section shall apply to any case where the debt to the creditor has been contracted for board or lodging, or where the debtor is an unmarried person and the judge, upon enquiry, finds that he has no one dependent upon him for support. 1927, c. 45, s. 2 (2).

No exemp-
tion where
debt is for
board or
lodging or
single debtor
has no
dependents.

(3) If the debtor desires to contend that in the circumstances of any particular case, having regard to the size of the debtor's family, the wages he is earning and any other matter or thing which the judge may deem it proper to take into account, the exemption hereby allowed should in any case be increased, the judge shall have power to increase and to make any order providing for an increase of exemption which he may consider just and reasonable under all the circumstances. 1920, c. 42, s. 2, *part*.

Increase of
exemption.

(4) Where the creditor intends to apply for a reduction in the amount of the exemption he shall give notice of such intention to the employer at the time of the service of the notice or other process garnisheeing or attaching the wages, and if he fails to give such notice the employer may pay into court so much only of the wages of the debtor as would not be exempt under subsection 1 and may pay the balance of such wages to the debtor.

Notice of
application
for reduc-
tion of
exemption.

(5) Subject to subsection 4, the debtor or creditor without awaiting the regular sittings of the court may apply to the judge upon at least five days' notice in writing to the other party or his solicitor, for an order fixing the amount of the debtor's exemption and upon the making of such order, if the employer has paid the whole or any part of the wages into court, and the amount so paid in equals or exceeds the amount allowed by way of exemption, such sum shall be forthwith paid out to the debtor, and in case the amount paid in is less than the amount so allowed, the whole amount paid in shall be paid out to the debtor. 1925, c. 42, s. 2.

Application
to judge to
fix exemp-
tion.

CHAPTER 177.

The Master and Servant Act.

LIMIT OF DURATION OF CONTRACT.

Limitation of
voluntary
contract of
service or
indenture.

1. No voluntary contract of service or indenture entered into by any persons shall be binding on them, or either of them, for a longer time than a term of nine years from the date thereof. R.S.O. 1914, c. 144, s. 2.

PROFIT-SHARING AGREEMENT.

Agreement
for share in
profits of
business.

2.—(1) An agreement entered into by a workman, servant or employee and his master or employer under which a share of the profits of any trade, calling, business or employment is to be paid to the workman, servant or employee in lieu of or in addition to salary, wages or other remuneration unless the agreement otherwise provides or a contrary intention may be reasonably inferred therefrom shall not

(a) create any relation in the nature of a partnership or the rights or liabilities of partners, or

(b) give to the workman, servant or employee the right to examine into the accounts or interfere in the management or affairs of the trade, calling or business.

Employer's
statement of
profits to
be final.

(2) Any statement or return by the employer of the net profits of the trade, calling, business or employment on which he declares and appropriates the share of profits payable under such agreement shall be final and conclusive between the parties and all persons claiming under them, and shall not be impeachable upon any ground whatever, except fraud. R.S.O. 1914, c. 144, s. 3.

COMPLAINTS FOR NON-PAYMENT OF WAGES.

Complaints by
servants
for non-pay-
ment of
wages.

3.—(1) Upon the complaint upon oath of a servant or labourer against his master or employer concerning any non-payment of wages a justice of the peace may summon the master or employer to appear before him at a reasonable time to be stated in the summons, and he or some other justice upon proof on oath of the personal service of the summons,

or of its service as hereinafter authorized, shall examine into the matter of the complaint, whether or not the master or employer appears, and upon due proof of the cause of complaint the justice may discharge the servant or labourer from the service or employment of the master or employer, and may direct the payment to him of any wages found to be due, not exceeding the sum of \$100, and the justice shall make such order as to him seems just and reasonable for the payment of such wages, with costs, and in case of the non-payment of the same, together with the costs, for the space of eight days after the order has been made the justice shall issue his warrant of distress for the levying of the wages, together with the costs of the order and of the distress. R.S.O. 1914, c. 144, s. 4 (1); 1924, c. 40, s. 2.

(2) A complaint may be prosecuted and determined in any county or district in which the person complained against is found, or in any county or district in which the person complained against carries on business.

Where complaints may be prosecuted.

(3) Proceedings may be taken under this Act within one month after the engagement or employment has ceased, or within one month after the last instalment of wages under the agreement of hiring has become due, whichever shall last happen.

Time within which proceedings may be taken.

(4) Proceedings may be had for non-payment of wages in respect of service or labour performed in Ontario upon a verbal or written agreement or bargain made out of Ontario.

Work done in Ontario under agreement made out of Ontario.

(5) Where the master or employer claims a set-off or makes a claim for unliquidated damages the justice of the peace shall investigate the same and give judgment for the balance of wages, if any, due to the claimant after deducting such set-off or claim.

When master claims set-off.

(6) The justice of the peace shall not have jurisdiction to adjudicate upon a set-off or claim exceeding the claim for wages except to the extent of the wages. R.S.O. 1914, c. 144, s. 4 (2-6).

Limit of jurisdiction as to set-off.

4. Where the proceedings are taken before a police magistrate, and payment of wages is ordered by him to be made by the master or employer to the servant or labourer, and the same are not paid within the time limited by the order, the same proceedings may be taken by the person claiming the benefit of the order as may be taken by a party having an unsatisfied judgment or order in a division court for the payment of any debt, damages or costs, as respects the examination of the judgment debtor touching his estate and effects, the means he has of discharging his liability, and the disposal he has made of any property, and the police magistrate shall have the like power and authority to enforce payment of the debt as are possessed by a judge of a division court in like

Additional remedy in cases before police magistrate.

Rev. Stat.
c. 95.

cases; and the practice and proceedings thereon shall be the same as nearly as may be and have the same effect as provided in *The Division Courts Act* with respect to judgment debtors. R.S.O. 1914, c. 144, s. 5.

Limit of
time for
payment.

5. Subject to the provisions of section 6 the police magistrate may name in the order for payment of wages such time, not exceeding twenty-one days, as to him may seem just and reasonable for the payment of the same and costs, and in case of non-payment within such time the complainant shall be entitled to take forthwith the proceedings for enforcing payment herein provided. R.S.O. 1914, c. 144, s. 6.

Jurisdiction
of police
magistrate in
cities.

Rev. Stat.
c. 173.

6.—(1) In the case of wages due to any mechanic, labourer or other person in respect of work of the character mentioned in section 5 of *The Mechanics' Lien Act* the jurisdiction of a police magistrate of a city under this Act shall extend to wages for thirty days, or for a balance equal to the wages for thirty days, though the same or the balance thereof exceed the sum of \$100. R.S.O. 1914, c. 144, s. 7 (1), *part*.

Where no
specific rate
of wages
agreed on.

(2) Where no specific rate of wages has been expressly agreed to between the parties, the police magistrate of a city may order payment of the wages, reckoning the amount thereof according to the current rate of wages in the city in like cases, or according to what may appear to be a just and reasonable allowance.

Order for
payment
of wages;
enforcing.

(3) The order shall direct payment of the wages to be made forthwith, and a warrant of distress shall be issued accordingly, unless the master makes oath, and the police magistrate believes, that the master is unable to make the payment forthwith, and expects to be able to pay and intends to pay the same within the time given, and unless also the police magistrate considers the proposed delay to be under the circumstances reasonable, and the magistrate, if he sees fit, may order security to be given as a condition of delay.

Adjournment
at instance
of master.

(4) In case of an adjournment at the instance of the master the same shall be on payment for the claimant's time in attending the court, the amount to be fixed by the police magistrate, and such payment shall be made forthwith unless the police magistrate sees reason for dispensing with immediate payment.

Enforcement
in division
court.

(5) The order for payment may be filed in that division court which would be the proper court for bringing an action for the wages, and on such filing the order shall become a judgment of such division court and may be enforced as a judgment of that court. R.S.O. 1914, c. 144, s. 7 (2-5).

SERVICE OF SUMMONS.

7.—(1) Every summons issued under this Act against an individual, firm or corporation, and every subsequent paper or proceeding in the action or proceeding in which the summons has been issued may be served, except in the cases provided for by subsection 2, upon the person to whom it is directed either by delivering it to him personally or, if he cannot conveniently be found, by leaving the same for him at any place where such individual, firm or corporation carries on business, within the county or district in which the justice of the peace issuing the summons has jurisdiction, with some adult person employed in the office or place of business of such person.

Service of
summons, etc.

(2) In cases against railway, telegraph, telephone or express companies every such summons and other papers may be served on any agent of the company whose office or place of business as such agent is within such county or district; and for the purposes of this section the word "agent" shall include—

Service on
certain
public
companies.

- (a) in the case of a railway company, a station master having charge of a station belonging to the company;
- (b) in the case of a telegraph company, a person having charge of a telegraph office belonging to the company;
- (c) in the case of a telephone company, a person having charge of a telephone office belonging to the company; and
- (d) in the case of an express company, a person having charge of an express office belonging to the company.

(3) Service as authorized by this section shall have the same effect as personal service. R.S.O. 1914, c. 144, s. 8.

Effect of
service under
this section.

APPEALS.

8.—(1) An appeal from an order for the payment of wages, or order of dismissal from service or employment, or against any decision of any justice of the peace or police magistrate under this Act shall be made to the division court of the division in which the cause of action arose or in which the party or parties complained against, or one of them, resided at the time of the making of the complaint, or to the division court holden in the division in which the party or parties complained against or one of them carried on business, and in case of dismissal of the appeal, or affirmance of the order or decision, the court appealed to shall enforce the order

Mode of
appeal.

for payment of wages or of dismissal, and for the payment of the costs awarded, and shall, if necessary, issue process for carrying such judgment into effect.

Time for
appealing,
and pro-
ceedings
on appeal.

(2) The appeal shall be taken within the time and in the manner provided by *The Summary Convictions Act* as to appeals to a division court, and the proceedings upon and incidental to the appeal and subsequent thereto shall, except as provided by subsection 1 and by section 9, be the same as in the case of an appeal under *The Summary Convictions Act*. R.S.O. 1914, c. 144, s. 9.

Rev. Stat.
c. 121.

Trial with
or without
jury.

9.—(1) The appeal may be tried with a jury if the appellant files with the clerk of the court within ten days after the order or decision a notice requiring a jury, or if the respondent within four days after the service of the notice of appeal upon him files a notice with the clerk requiring a jury, and if the proper fees are in either case deposited with the clerk; otherwise the judge may try the appeal without a jury or may summon a jury from the body of the court as to him seems meet.

Time and
place for
hearing
appeals.

(2) Upon the application of either party when a jury is not required the judge may try the appeal at such time and place as he may appoint, and upon such notice as to him seems reasonable. R.S.O. 1914, c. 144, s. 10.

AGREEMENTS WAIVING ACT.

Contracts
waiving
application of
Act to be
void.

10.—(1) Every agreement or bargain, verbal or written, expressed or implied, on the part of any workman, servant, labourer, mechanic, or other person employed in any kind of manual labour intended to be dealt with in this Act whereby it is agreed that this Act shall not apply, or that the remedies hereby provided shall not be available for the benefit of any person entering into such agreement, is hereby declared to be null and void and of no effect as against any such workman, servant, labourer, mechanic, or other person.

Section
not to apply
to certain
persons.

(2) This section shall not apply to any manager, officer or foreman or to any other person whose wages are more than \$5 a day. R.S.O. 1914, c. 144, s. 11.

CHAPTER 178.

The Trade Disputes Act.

1. In this Act,—Interpreta-
tion.

- (a) “Employer” shall mean and include any person “Employer.” or body of persons, incorporated or unincorporated, employing not less than ten workmen in the business in which the trade dispute has arisen;
- (b) “Employees” shall mean and include a person or “Employees.” persons in the employment of an employer. R.S.O. 1914, c. 145, s. 2.

2.—(1) A claim or dispute under this Act shall include any disagreement between an employer and his employees in respect of,—

Claims and
disputes
within the
Act.

- (a) the price to be paid for work done, or in course of being done, whether such disagreement shall have arisen with respect to wages, or to the hours or times of working;
- (b) damage alleged to have been done to work, delay in finishing the same, not finishing the same in a good and workmanlike manner or according to agreement;
- (c) materials supplied to employees and alleged to be bad, or unfit, or unsuitable;
- (d) the price to be paid for mining any mineral or substance mined, or obtained by mining, hewing, quarrying or other process; or the allowances, if any, to be made for bands, refuse, faults or other causes whereby the mining of the mineral substance is impeded;
- (e) the performance or non-performance of any stipulation or matter alleged to have been in an agreement, whether in writing or not;
- (f) insufficient or unwholesome food supplied to employees where there is an agreement to victual them, or to supply them with provisions or stores of any kind;

(g) ill-ventilated or dangerous workings or places in mines, or unwholesome or insanitary rooms or other places of accommodation in which work is being performed, or want of necessary conveniences in connection with such rooms or places;

(h) the dismissal or employment under agreement of employees; or,

(i) the dismissal of employees for their connection with any trade or labour organization.

Minimum number of employees affected.

(2) No claim or dispute shall be the subject of conciliation or arbitration in any case in which the employees affected by such claim or dispute are fewer in number than ten. R.S.O. 1914, c. 145, s. 3.

Office of Registrar.

3.—(1) The Lieutenant-Governor in Council may appoint a Registrar of Councils of Conciliation and of Arbitration for the settlement of industrial disputes.

To whom to be at first assigned.

(2) Such office shall be assigned to some person performing other duties in the public service, unless and until the duties are so onerous as to require a separate appointment.

Duties, etc., of Registrar.

(3) It shall be the duty of the Registrar to receive and register and, subject to the provisions of this Act, to deal with all applications by employers or employees for reference to a council of conciliation or to the council of arbitration of any claim or dispute within the meaning of this Act; to convene such councils for the purpose of dealing with any claim or dispute, to keep a register in which shall be entered the particulars of all references and settlements of claims and disputes made to and by a council of conciliation, and of all references and awards made to and by the council of arbitration; and generally to do all such things and take all such proceedings as may be required in the performance of his duties under this Act or the regulations made in pursuance thereof.

Registrar to summon witnesses and issue notices.

(4) The Registrar shall issue all summonses (Form 15) to witnesses to attend to give evidence, with or without the production of papers and documents, and shall issue all notices and perform all other acts in connection with the sittings of each such council in the prescribed manner.

Registrar to proceed to locality where strike or lockout threatened.

(5) If any difference shall arise between any employer and his employees likely to result or resulting in a strike on the part of such employees, or a lockout on the part of the employer, it shall be the duty of the Registrar, when requested in writing to do so by five or more of the employees, or by the employer, or by the head of the municipality in which the industry is situated, to visit the place of such disturbance and diligently seek to mediate between the employer and employees.

(6) It shall be the duty of the Registrar to promote conditions favourable to a settlement by endeavouring to allay distrust, to remove causes of friction, to promote good feeling, to restore confidence, and to encourage the parties to come together and themselves effect a settlement, and also to promote agreements between employers and employees with a view to the submission of differences to conciliation or arbitration before resorting to a strike or lockout. R.S.O. 1914, c. 145, s. 4.

Duty of Registrar in adjusting disputes.

COUNCILS OF CONCILIATION.

4.—(1) A council of conciliation for the purpose of any dispute or claim shall consist of four conciliators, two to be nominated by each of the parties to the dispute.

Councils of conciliation.

(2) The nomination shall be by writing lodged with the Registrar.

Nomination of conciliators.

(3) Either party may lodge the nomination papers with the Registrar at any time after the dispute has arisen; and if the Registrar has not already received a nomination of two conciliators on behalf of the other party he shall give notice to such other party of the nomination which he has received.

Filing nomination papers.

(4) Any vacancy in a council of conciliation arising through the death, resignation, or otherwise of any member thereof shall be filled in the same way as the appointment was first made, namely, on the nomination of the party whose conciliator has ceased to be a member of the council. R.S.O. 1914, c. 145, s. 5.

Vacancies.

PROCEDURE FOR CONCILIATION.

5. A claim or dispute within the meaning of this Act may be referred for settlement to a council of conciliation where,—

Reference to council of conciliation.

(a) the parties to the claim or dispute jointly agree in the prescribed manner (Form 2), to refer such claim or dispute for settlement to a council of conciliation, or,

Agreement to refer.

(b) either party to the claim or dispute, in the prescribed manner, lodges an application (Form 3) with the Registrar requesting that the claim or dispute be referred for settlement to a council of conciliation. R.S.O. 1914, c. 145, s. 6.

Application for reference.

6. The Registrar, on receipt of any such agreement or application for a reference to a council of conciliation, shall forthwith lay the same before the council; and, subject to the provisions of this Act and the regulations, shall carry out all

Duties of registrar on application for reference.

directions of the said council given in the endeavour of the council to effect a settlement of the claim or dispute. R.S.O. 1914, c. 145, s. 7.

Representa-
tives before
council of
conciliation.

7. Either party to the claim or dispute may, for the purposes of this Act, be represented by one or more persons, not exceeding three, authorized by such party as managers in that behalf; and such party shall be bound by the acts of such managers. R.S.O. 1914, c. 145, s. 8.

When man-
agers must
have written
authority.

8. Where the party numbers fewer than twenty the managers must be authorized in writing (Form 4), signed by the members of the party to act for and on their behalf. R.S.O. 1914, c. 145, s. 9.

Election of
managers as
representa-
tives.

9.—(1) Where the party numbers twenty or more the managers may be appointed or elected in such manner as the members of the party think proper.

Record of
election.

(2) A copy of the resolution electing the managers, together with a declaration by the chairman or president of the meeting stating it to have been carried, shall be kept as a record of the election. R.S.O. 1914, c. 145, s. 10.

Written
statement
of case.

10.—(1) The parties to the claim or dispute shall, if possible, agree to a joint written statement of their case; but if they do not so agree a statement in writing from each party shall be made.

To be for-
warded to
registrar.

(2) The statement or statements shall be forwarded to the Registrar before the meeting of the council. R.S.O. 1914, c. 145, s. 11.

Convening
meeting of
conciliators.

11. When the parties to a claim or dispute have named their conciliators the Registrar shall by notice in writing (Form 5) convene a meeting of the conciliators at a time and place mentioned in the notice, the same being selected with due regard to the general convenience of the conciliators and the parties. R.S.O. 1914, c. 145, s. 12.

Report of
council.

12.—(1) The council shall transmit to the Registrar a report (Forms 6 and 7), setting forth the result of the reference.

When
council re-
port their
failure to
bring about
settlement.

(2) In case such report is to the effect that the council has failed to bring about any settlement or adjustment of the claim or dispute the Registrar, on the receipt of the report, shall transmit a certified copy to each party to the claim or dispute; whereupon either party may, by notice in writing (Forms 8 and 9), require the Registrar to refer the claim or dispute to the council of arbitration for settlement (Form 10). R.S.O. 1914, c. 145, s. 13.

THE COUNCILS OF ARBITRATION.

- 13.**—(1) There shall be two councils of arbitration,— Establishment of council of arbitration.
- (a) a council of arbitration for the settlement by award in respect of claims and disputes between railway companies, including street railway companies, and wage earners employed in respect of railway construction or traffic on railways; and
- (b) a council of arbitration in respect of other claims and disputes.
- (2) Each council shall consist of three members, one to be appointed by the Lieutenant-Governor on the recommendation of the employees, and one to be appointed by him on the recommendation of the employer. Each council to consist of three members
- (3) The third member of each council shall be the president of the council and shall be appointed in manner following, namely: The two members appointed shall within twenty-one days after their appointment submit (Form 1) to the Lieutenant-Governor the name of some impartial person to be appointed by him to the position of president. Appointment of president by agreement.
- (4) In case of the said two members failing so to do the Lieutenant-Governor may appoint as president an impartial person not personally connected with or interested in any trade or industry, or in the judgment of the Lieutenant-Governor likely, by reason of his former occupation, business vocation or other influence, to be biased in favour of or against employers or employees. Appointment of president on failure to agree.
- (5) The same person may be president of both councils. One for both.
- (6) As soon as practicable after a full council has been appointed by the Lieutenant-Governor notice of the appointment and the names of the members of the council shall be published by the Registrar in the *Ontario Gazette*. Council to be gazetted.
- (7) The Lieutenant-Governor may cancel the appointment of any member on the recommendation of the authority by which his appointment was recommended. Cancellation of appointment.
- (8) The term of office of a member shall be two years; and at the end of every term of two years a fresh appointment of members shall be made in manner aforesaid. Term of office.
- (9) Every member after the expiry or other termination of his term of office shall be eligible for reappointment for a like term. Members eligible for re-appointment.
- (10) If the president of a council shall be declared a bankrupt or insolvent, or shall make a composition with his creditors, or shall make an assignment of his property or salary for the benefit of his creditors, or if any member of either council shall be convicted of any criminal offence, such
- When president or members to forfeit office.

president or member respectively shall thereby vacate his office of member.

Vacancies,
disabilities,
etc.

(11) Any vacancy in a council arising from death, resignation or other cause shall be filled by the Lieutenant-Governor for the term of office, or the residue of such term, as the case may be, in accordance with the respective methods prescribed by this Act.

Temporary
appointment
of president.

(12) In case the president of a council is unable to act as such from illness, absence from the Province, or other temporary cause the Lieutenant-Governor may appoint a person to be acting president of the council in his place; and such acting president shall have all the powers and perform all the duties conferred by this Act upon the president.

Illness or
disability of
member of
council while
reference
pending.

(13) If any member of a council, other than the president, is, from illness or from any other disability howsoever arising, unable to perform the duties of his office in respect to any claim or dispute then pending the parties thereto may consent, in writing under their respective hands, to the appointment by the Lieutenant-Governor of a member named in such writing to act for and in the place of the member during such disability; and if either of the parties refuse such consent the judge of the county or district court of the county or district in which the matter is situate with respect to which the claim or dispute has arisen may, on notice to the parties of the application to him, make the nomination; and the Lieutenant-Governor may appoint the person so nominated, who shall thereupon be deemed a member of such council for all the purposes relating to such claim or dispute and to the hearing and determination thereof.

Members of
council of
conciliation
may sit as
assessors.

(14) Where a dispute has been referred to either council of arbitration the members of the council of conciliation may, with the consent in writing (Form 13) of both parties to the claim or dispute, sit as assessors upon the reference to the council of arbitration; but no such assessor shall take any part in the reference except as an assessor sitting to inform the council of arbitration when called upon to do so.

Proviso.

Remunera-
tion of mem-
bers of coun-
cils.

(15) The members of each council of arbitration shall be remunerated for their services in such manner and according to such rate of payment as the Lieutenant-Governor in Council shall appoint, but subject to legislative provision being made therefor. R.S.O. 1914, c. 145, s. 14.

Mode of
appointing
arbitrators
by employers
and
employees.

14. The following may be the method of ascertaining the recommendation of employer and employees as to the persons to be appointed on their recommendation respectively as members of the council of arbitration:—

Qualification
of voters in
the interest
of employers.

(a) For the person to be recommended by the employer every employer in Ontario shall be entitled to one vote; every organization in Ontario, whether incor-

porated or unincorporated, representing the interests of employers, each member of which has at least ten persons in his employment, shall be entitled to one vote.

- (b) Every board of trade in Ontario legally constituted shall be entitled to one vote for a representative of the employer in each council. Boards of trade in Ontario.
- (c) For the person to be recommended by employees as a member of the council in matters not relating to railway companies, every trades and labour council, every district assembly of the Knights of Labour, every federated council of building trades, every lawfully incorporated trades union, every organization of wage-earners of an industrial calling primarily constituted for, and actually and *bona fide* operated for the regulation of the wages and hours of labour as between employers and employed, shall be entitled to one vote; but this shall not be deemed to include co-operative associations or societies formed under Chapter 202 of the Revised Statutes of Ontario, 1897. Who may vote for person to be recommended in the interest of employees.
- (d) For choosing the person to be recommended by employees of railway companies as a member of the council in matters relating to railways, every organization in Ontario, whether incorporated or unincorporated, exclusively representing the interest of wage-earners employed in respect of railway construction or traffic on railways shall be entitled to one vote; but this shall not be deemed to include co-operative associations or societies. Who may vote for person to be recommended in the interest of railway employees.
- (e) The Registrar shall give notice in the *Ontario Gazette* calling on all organizations and persons entitled to vote for a member to be recommended to either council, or claiming to be so entitled, to communicate with him on or before the 1st day of August, of every second year reckoned from 1910; and such notice shall be inserted for at least four weeks before that day in every such year. Notice to representative interests.
- (f) The Registrar shall forthwith, after such 1st day of August, prepare a list of the persons and organizations appearing to be entitled to vote for a person to be recommended for appointment to each of the said councils respectively, and may refer any doubtful claim to the Minister of Labour for his advice or direction. Lists to be prepared.
- (g) Each list so to be prepared shall give the last known post office address of every person and organization entitled to vote as employers and employees respectively for the said councils respectively, and Contents of lists.

Inspection.

Voting papers to be transmitted to persons entitled to vote.

Signing voting papers.

Addressing voting papers.

Rev. Stat. c. 178.

When voting papers to be mailed.

Voting papers not received in time.

Count of votes and report to be published.

shall be published in the *Ontario Gazette*, and shall be open to inspection at any time by any person without fee, in the office of the Registrar during office hours.

(h) Between the 1st and 30th days of September of every second year reckoned from 1910 the Registrar shall transmit by registered post to the address of each person and organization entitled to vote a voting paper (Form 16).

(i) The voting paper of any person entitled to vote under this Act as an employer shall be signed by himself or some person duly authorized in writing in that behalf, and the voting paper of any organization entitled to vote shall be signed by the president or vice-president of the organization, or, in the absence of such president or vice-president, by any office bearer of the organization other than the secretary thereof, and shall be countersigned by the secretary or acting secretary, or, in the absence of such secretary or acting secretary, by any two members not being office bearers; and the voting papers of a board of trade shall be under the corporate seal of the board;

(j) The voting paper shall be forwarded in a stamped envelope, addressed to the Registrar of Councils of Conciliation and Arbitration, Toronto, and endorsed, "Voting paper under *The Trade Disputes Act*."

(k) Every voting paper shall be forwarded by mail or otherwise to the Registrar so as to be received by him on or before the 15th day of October of the year in which the voting is to be held, and any voting paper received by the Registrar after the said date shall have no effect or validity.

(l) The Registrar shall forthwith, after the said 15th day of October, count the recommendations as well by or on behalf of employees, as by or on behalf of employers for each council, and shall forward the same to the Minister of Labour, together with the Registrar's report thereon; and the Minister of Labour, upon being satisfied of the accuracy of such report, shall publish in the *Ontario Gazette* the result of such recommendations, and the names of the persons appointed by the Lieutenant-Governor upon such recommendations to be members of the councils of arbitration; and also the names of and number of votes given for the five persons who have received the greater number of votes for each council on behalf of employers and employees respectively.

- (m) In case either employers or employees, or both, fail to recommend any person to represent them on either or both the councils, as provided for in this section, the Lieutenant-Governor in council may appoint a person or persons to fill the vacancy or vacancies. R.S.O. 1914, c. 145, s. 15.
- Where parties fail to recommend member of council of arbitration.

PROCEDURE FOR ARBITRATION.

15.—(1) Any dispute or claim within the meaning of this Act may be referred to the appropriate council of arbitration for its hearing and determination in any of the following cases,—

Reference to arbitration, how made, etc.

- (a) on application (Form 9) to the Registrar by either party to a claim or dispute which, having been referred to a council of conciliation, has not been settled or adjusted by such council;
- (b) on application (Form 8) to the Registrar by both parties to a claim or dispute, which has not been so referred to a council of conciliation.

Provided that if in either case the award of the council of arbitration is not complied with or carried out by the parties, or for any reason proves abortive, the parties to the reference, or either of them, shall not thereby be precluded from referring the dispute to a council of conciliation or from making a second reference to the council of conciliation where a former reference has already been made to it.

Proviso.

(2) If in case of a claim or dispute, within the meaning of this Act, one party has lodged an application with the Registrar requesting that the dispute or claim be referred to a council of conciliation, and appointing two conciliators for the purpose, and notice of the application and of the appointment of conciliators has been duly given to the other party, and such other party has not within a reasonable period appointed conciliators, and the party lodging the application has not proceeded to a strike or lock-out, as the case may be, the council of arbitration, if it thinks fit, may proceed as in case of an abortive reference to a council of conciliation, and such council may report their decision as to the proper settlement of the dispute in question and also in case the council thinks proper, a concise statement as to the origin of the dispute, and the causes inducing the same, and what parties, if any, are in the opinion of the council mainly responsible for the same.

Where attempt to take conciliation proceedings has failed.

(3) The mayor of any city or town, upon being notified that a strike or lock-out is threatened or has actually occurred within the municipality, shall at once notify the Registrar thereof by writing, stating the name of the employer, the nature of the dispute, and the number of employees involved as far as his information will enable him so to do.

Mayors to notify registrar of strike or lock-out.

Duty of
councils of
arbitration
on being
notified of
strike or
lock-out.

(4) It shall be the duty of each of the councils of arbitration, upon being notified, or on being otherwise made aware, that a strike or a lock-out has occurred or is threatened, to place itself, as soon as practicable, in communication with the parties concerned and to endeavor by mediation to effect an amicable settlement, and if in the judgment of the council it is deemed best to enquire into the cause or causes of the controversy it shall proceed as in the case of a reference. R.S.O. 1914, c. 145, s. 16.

Provisions
as to
parties and
representa-
tives.

16. In every case referred to a council of arbitration, or in which the council has determined to act under the preceding section of this Act, the council shall have power to require either or each party to the claim or dispute to name not more than three persons, who, upon their consent in writing (Form 14) shall for all purposes of the reference be taken to represent such party. R.S.O. 1914, c. 145, s. 17.

Conduct of
proceedings
of council
of arbitra-
tion.

17.—(1) The council shall sit and conduct its proceedings as in open court, and in making its decision shall be governed by the principles of equity and good conscience.

Powers of
president.

(2) The president shall, for the purpose of preserving order during any sitting of the council, have all the powers of a judge of the Supreme Court, except the power of committing for contempt. R.S.O. 1914, c. 145, s. 18.

Quorum of
council of
arbitration.

18. Any two members of the council of arbitration shall constitute a quorum for the transaction of business, and may hold meetings at any time and at any place within Ontario. R.S.O. 1914, c. 145, s. 19.

Investigation
of disputes
by one mem-
ber of board.

19. The council of arbitration may order that an examination or investigation shall be held before any one member of the council, but such member shall report upon such examination or investigation to the council, and the decision of such member shall not be considered binding until approved by the council or a majority thereof. R.S.O. 1914, c. 145, s. 20.

Award, how
to be made.

20.—(1) The report or award (Form 11) of the council of arbitration shall be made within one month after the council has completed its sittings for the hearing of the reference, and shall be by and under the hands of a majority of the members of the council.

Publication
in Gazette.

(2) At the request of either party, and if the council approves, a copy of the report or award shall be published by the Registrar in the *Ontario Gazette*.

Deposit with
registrar.

(3) The report or award, or a copy certified under the hand of the president of the council, shall be deposited in the office of the Registrar and shall be open to inspection without charge during office hours. R.S.O. 1914, c. 145, s. 21.

Inspection.

21.—(1) Either party to a reference to either council of arbitration, at any time before award made, may by writing under the hands of such party (Form 12), agree to be bound by the award of the council upon the reference in the same manner as parties are bound upon an award made pursuant to an ordinary submission in writing to arbitration under *The Arbitration Act*. Agreement to be bound by award. Rev. Stat. c. 97.

(2) Every such agreement made by one party shall be communicated by the Registrar to the other party, and if such other party also agrees in like manner to be bound then the award may, on the application of either party, be enforced in the same manner as an award on an ordinary submission in writing to arbitration may be enforced under the said Act. Award may be enforced by legal proceedings if so agreed. R.S.O. 1914, c. 145, s. 22.

MISCELLANEOUS PROVISIONS.

22. The councils of conciliation and arbitration shall have power,— Powers of councils.

(a) to visit the locality where the trade dispute has arisen and to hear all persons interested who may come before them; To visit locality.

(b) to summon (Form 15) any person to attend as a witness before the council, and in the case of any person so summoned refusing to attend after payment or tender of his proper fees application may be made in a summary way to a justice of the peace having jurisdiction in the city, town or county wherein the council may be sitting for an order compelling such attendance; and such justice of the peace may make such order as might be made in any case wherein such justice has power to compel appearance before him in pursuance of *The Summary Convictions Act*, and Enforcing attendance of witnesses. Rev. Stat. c. 121.

(c) to administer an oath to any person attending as a witness before the council and to examine any such person on oath or affirmation. Taking evidence on oath. R.S.O. 1914, c. 145, s. 23.

23. No party to any proceeding either before a council of conciliation or a council of arbitration shall be represented by counsel or solicitor or by any paid agent other than one or more of the persons between whom the claim or dispute has arisen. Professional assistance not permitted. R.S.O. 1914, c. 145, s. 24.

24. No fees shall be paid to the Registrar by any party in respect of any proceeding under this Act. Registrar not to receive fees. R.S.O. 1914, c. 145, s. 25.

Remuner-
ation
of members
of council of
conciliation.

25. Every member of a council of conciliation, while engaged in adjustment of any dispute, shall be remunerated for his services as follows:

Preliminary meetings	\$3
Whole day sittings	\$4
Half day sittings	\$2

out of any funds which may be appropriated by this Legislature for that purpose. R.S.O. 1914, c. 145, s. 26.

Witnesses'
fees.

26. Witnesses shall be entitled to the same fees as in a division court. R.S.O. 1914, c. 145, s. 27.

Regulations.

27.—(1) The Lieutenant-Governor may make regulations for the purpose of giving effect to any of the provisions or requirements of this Act, and all such regulations not being inconsistent with this Act shall have the full effect of law on publication in the *Ontario Gazette*.

To be laid
before
Assembly.

(2) Such regulations shall be laid before the Assembly within fourteen days after being published in the *Ontario Gazette* if the Legislature is in session, and if it is not in session then within the first fifteen days of the ensuing session. R.S.O. 1914, c. 145, s. 28.

Informalities
not to invali-
date proceed-
ings.

28. No proceeding under this Act shall be deemed invalid by reason of any defect of form, or any technical irregularity. R.S.O. 1914, c. 145, s. 29.

FORM 1.

(Section 13.)

RECOMMENDATION AS TO PRESIDENT OF THE COUNCIL OF ARBITRATION.

We, the undersigned arbitrators, appointed under the provisions of *The Trade Disputes Act*, submit the name of _____, of _____ as that of an impartial person qualified for the position of President of the Council of Arbitration as respects railway disputes (or as respects disputes other than railway disputes).

Dated this _____

day of _____

R.S.O. 1914, c. 145, Form 1.

FORM 2.

(Section 5.)

AGREEMENT OF BOTH PARTIES TO REFER TO CONCILIATION.

(To be prepared in duplicate.)

Memorandum of agreement made this _____ day of _____, between _____, employers, and _____ employees.

Whereas a claim or dispute in respect of matters hereinafter stated has arisen between the parties hereto, they do hereby refer the said claim or dispute for settlement to a council of conciliation, and we, the undersigned, as managers for the said employers, do hereby name and declare _____ and _____ to be conciliators for such employers; and we, the undersigned, as managers for the employees, do hereby name _____ and _____ to be the conciliators for such employees upon such council as aforesaid.

The claim or dispute is as follows (here state the matter or matters in dispute).

Now, we, the parties hereto, do hereby request the Registrar to have the said claim or dispute referred to a council of conciliation consisting of the aforesaid persons.

(To be signed by the)

Managers for the Employers.

Managers for the Employees.

Witness:

(Appointment of Managers to be attached.)

See Form 4.

R.S.O. 1914, c. 145, Form 2.

FORM 3.

(Section 5.)

APPLICATION BY ONE PARTY TO REFER TO CONCILIATION.

(Date.)

Whereas a claim or dispute has arisen between employers and employees; we, the undersigned managers for and on behalf of the aforesaid, apply to have the said claim or dispute referred to a council of conciliation, and hereby name and declare of such council as aforesaid. to be our conciliators upon

The dispute or claim is as follows (here state the matter or matters in dispute.)

Managers for

(Appointment of Managers to be attached.)

See Form 4.

R.S.O. 1914, c. 145, Form 3.

FORM 4.

(Section 8.)

AUTHORITY TO MANAGERS TO ACT.

We, the undersigned employers (*or* employees), one of the parties to the claim or dispute between _____ and _____ authorize _____ of _____ of _____ to represent us, as managers before the council of conciliation, and we hereby agree to be bound by the acts of these our representatives.

Dated this _____ day of _____, 19 _____

(*Where the appointment is made by employees it should be signed by not fewer than ten of such employees.*)

Witness:

R.S.O. 1914, c. 145, Form 4.

FORM 5.

(Section 11.)

CONVENING A MEETING OF CONCILIATORS.

(Date.)

I beg to inform you that you have been selected as a conciliator to deal with a certain dispute or claim between _____ employers and _____, employees.

You are requested to attend a meeting of the conciliators in the above matter, to be held on the _____ day of _____ at _____, in the _____, when the application in the said matter will be laid before you.

I have the honor to be,
Your obedient servant,
A.B., Registrar.

R.S.O. 1914, c. 145, Form 5.

FORM 6.

(Section 12.)

TERMS OF SETTLEMENT OF ADJUSTMENT AFTER REFERENCE TO COUNCIL
OF CONCILIATION.

Memorandum of settlement made this _____ day of _____, between _____, employers, and _____ employees.

Whereas a claim or dispute having arisen between _____ employers and _____ employees, _____ were appointed conciliators, and the undersigned, _____, were appointed managers for the said _____, and the undersigned, _____ were appointed managers for the said _____ it is hereby declared that a settlement or adjustment of the said claim or dispute has been arrived at in the following terms, to which terms the said managers hereby agree for and on behalf of the said parties respectively:

(Set forth terms of settlement.)

In witness whereof we, the undersigned, have hereunto set our hands.

A.B., C.D., Managers for Employers.

E.F., G.H., Managers for Employees.

I., J., K., Conciliators.

R.S.O. 1914, c. 145, Form 6.

FORM 7.

(Section 12.)

REPORT BY CONCILIATORS OF FAILURE TO SETTLE.

(Date.)

To the Registrar.

Whereas a certain claim or dispute was referred to us for conciliation by _____, employers and _____ employees, and such conciliation was duly entered upon, the parties aforesaid being duly represented by their respective managers and evidence was taken (*omit the latter words if such was not the case*), and the claim or dispute referred to us was fully discussed, but no settlement or adjustment was arrived at. Now, we, the conciliators hereinafter subscribed, report that we have been unable to bring about any settlement or adjustment of the claim or dispute so referred, satisfactory to the parties thereto.

A. B., C. D., Conciliators.

R.S.O. 1914, c. 145, Form 7.

FORM 8.

(Sections 12, 15.)

JOINT APPLICATION TO REFER TO THE COUNCIL OF ARBITRATION.

(Date.)

To the Registrar under *The Trade Disputes Act*.

Whereas a claim or dispute in respect of matters hereinafter stated has arisen between _____, employer, and _____, employees.

We, the undersigned, _____ managers for the said employers, and we, the undersigned, _____, managers for the said employees, duly appointed to represent the interests of the said parties respectively, hereby apply to have the said claim or dispute referred to the council of arbitration.

The claim or dispute is as follows:

(Here state the matter in dispute.)

Managers for Employers.

Managers for Employees.

(Appointment of Managers to be attached.)

See Form 4.

R.S.O. 1914, c. 145, Form 8.

FORM 9.

(Sections 12, 15.)

APPLICATION BY ONE PARTY TO REFER TO THE COUNCIL OF ARBITRATION AFTER FAILURE OF COUNCIL OF CONCILIATION.

(Date.)

To the Registrar under *The Trade Disputes Act*.

Whereas a claim or dispute having arisen between _____, employers, and _____, employees, was referred to a council of conciliation, and the said council failed to settle or adjust the same; now, therefore, we, the undersigned, being the managers duly appointed to represent _____, one of the parties to the said reference, do hereby require you to refer the said claim or dispute to the council of arbitration.

Managers.

R.S.O. 1914, c. 145, Form 9.

FORM 10.

(Section 12.)

REFERENCE TO COUNCIL OF ARBITRATION AFTER FAILURE OF COUNCIL
OF CONCILIATION.

(Date.)

To the President of the Council of Arbitration as respects railway
disputes (*or as respects disputes other than railway disputes*).

Whereas a certain claim or dispute having arisen between
and , the same was referred for conciliation to
and they have reported that they have been unable to bring about
any settlement or adjustment of the said claim or dispute satisfac-
tory to the parties thereto, and whereas , one of the
parties to the claim or dispute requires such claim or dispute to be
referred to the council of arbitration. Now, therefore, I do so
refer the said claim or dispute to the said council, and herewith
transmit all the papers in the said reference to you as president of
the said council.

Registrar.

R.S.O. 1914, c. 145, Form 10.

FORM 11.

(Section 20.)

AWARD.

We, , President, and , Arbitrators as respects
railway disputes (*or as respects disputes other than railway dis-
putes*) (*or a majority of the council of arbitration*), in the claim or
dispute between , employers, and
employees, do hereby award that
(*here set forth the award*).

Given under our hands this day of , A.D. 19

(President.)

(Arbitrators.)

Witness:

(Registrar.)

R.S.O. 1914, c. 145, Form 11.

FORM 12.

(Section 21.)

AGREEMENT TO BE BOUND BY AWARD.

Memorandum of Agreement made this _____ day of _____
 , 19____, between _____ and _____

Whereas certain claims or disputes (*here state shortly the nature of the claim or dispute*) have arisen between the parties hereto, and it is desirable to refer the same to the council of arbitration as respects railway disputes (*or as respects disputes other than railway disputes*) and for the said parties to be bound by the award of the said council of arbitration in the same manner as parties are bound upon an award made pursuant to an ordinary submission in writing to arbitration under *The Arbitration Act*.

Now it is hereby agreed by and between the parties aforesaid to refer the said claims or disputes to the award of the said council of arbitration, and each of the said parties agrees with the other to be bound by the award of the said council in the same manner as parties are bound upon an award made pursuant to an ordinary submission in writing to arbitration under *The Arbitration Act*.

In witness whereof we, the managers duly appointed and authorized to represent the parties hereto, have hereunto set our hands the day and year above written.

Witness:

Managers for Employers.

Managers for Employees.

R.S.O. 1914, c. 145, Form 12.

FORM 13.

(Section 13.)

CONSENT OF PARTIES TO CONCILIATORS BEING ASSESSORS IN COUNCIL OF ARBITRATION.

(Date.)

We, the managers appointed to represent the parties in the matter of the claim or dispute between _____, employers, and _____ employees, hereby consent to _____ members of the council of conciliation to which the matter aforesaid was referred, sitting as assessors upon the reference to the council of arbitration.

Managers for Employers.

Managers for Employees.

R.S.O. 1914, c. 145, Form 13.

FORM 14.

(Section 16.)

CONSENT OF MANAGERS TO ACT BEFORE THE COUNCIL OF ARBITRATION.

(Date.)

To the Registrar.

Whereas the council of arbitration has required one of the parties to a claim or dispute between and referred to the said Council for award, to name not more than three persons, who, upon their consent in writing, shall for all purposes of the above reference be taken to represent such persons, now we, the undersigned, having been duly named as such persons, do hereby consent to represent the said party for all the purposes of the hereinafore mentioned reference and in witness of such consent hereunto set our hands.

(Signed)

Witness:

R.S.O. 1914, c. 145, Form 14.

FORM 15.

(Sections 3, 22.)

SUMMONS TO WITNESS BEFORE EITHER COUNCIL.

To

Whereas a council of conciliation (or the council of arbitration as respects railway disputes) (or as respects disputes other than railway disputes) constituted under *The Trade Disputes Act* has now before it for conciliation (or arbitration, as the case may be), a claim or dispute between and

employees; and whereas the said council desire that you should attend before the said witness to give evidence, and have authorized and required me as registrar, to issue this summons for your attendance. I do hereby, in exercise of the powers in this behalf given by the said Act, summon and require you to attend at , on , the day of , at the hour of , in the noon of the said day, at before the said council, there to be examined and give evidence as to and concerning the said claim or dispute, and so to attend from day to day thereafter until you have been duly discharged by the said council from further attendance.

[And I further require you to bring with you and produce at the time and place aforesaid (documents, etc., if any, required to be produced by witness.)]

In default of your attending at the time and place aforesaid, you are liable to be proceeded against under the provisions of *The Trade Disputes Act*.

In witness whereof, I, the said , as such Registrar as aforesaid, have hereunto set my hand this day of , 19 .

A. B.,

Registrar.

NOTE.—The witness is entitled to the same witness fees as in a Division Court.

R.S.O. 1914, c. 145, Form 15.

FORM 16.

*(Section 14.)*VOTING PAPER OF *(naming the person or organization)*.

A. B. *(person recommended)* is hereby recommended to be appointed a member of the council of arbitration for disputes between railway companies and their employees (or in matters not relating to railway disputes) under *The Trade Disputes Act*, on behalf of the employer *(or employees, as the case may be)*.

(Signed.)

R.S.O. 1914, c. 145, Form 16.

CHAPTER 179.

The Workmen's Compensation Act.

PRELIMINARY.

1.—(1) In this Act:—Interpreta-
tion.

- (a) "Accident" shall include a wilful and an intentional act, not being the act of the workman, and a fortuitous event occasioned by a physical or natural cause; 1914, c. 25, s. 2 (1) (a). "Accident."
- (b) "Accident Fund" shall mean the fund provided for the payment of compensation, outlays and expenses under this Act in respect of Schedule 1; 1914, c. 25, s. 2 (1) (b); 1915, c. 24, s. 1 (1). "Accident fund."
- (c) "Board" shall mean Workmen's Compensation Board; "Board."
- (d) "Construction" shall include re-construction, repair, alteration and demolition; "Construction."
- (e) "Dependants" shall mean such of the members of the family of a workman as were wholly or partly dependent upon his earnings at the time of his death or who but for the incapacity due to the accident would have been so dependent; "Dependants."
- (f) "Employer" shall include every person having in his service under a contract of hiring or apprenticeship, written or oral, express or implied, any person engaged in any work in or about an industry, and where the services of a workman are temporarily lent or hired to another person by the person with whom the workman has entered into such a contract the latter shall be deemed to continue to be the employer of the workman whilst he is working for that other person; "Employer."
- (g) "Employment" shall include employment in an industry or any part, branch or department of an industry; "Employment."
- (h) "Industrial disease" shall mean any of the diseases mentioned in Schedule 3, and any other disease which by the regulations is declared to be an industrial disease; "Industrial disease."

- "Industry." (i) "Industry" shall include establishment, undertaking, trade and business;
- "Invalid." (j) "Invalid" shall mean physically or mentally incapable of earning;
- "Manufacturing." (k) "Manufacturing" shall include making, preparing, altering, repairing, ornamenting, printing, finishing, packing, assembling the parts of and adapting for use or sale any article or commodity;
- "Medical referee." (l) "Medical Referee" shall mean medical referee appointed by the Board;
- "Member of the family." (m) "Member of the Family" shall mean and include wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother and halfsister, and a person who stood *in loco parentis* to the workman or to whom the workman stood *in loco parentis*, whether related to him by consanguinity or not so related, and where the workman is the parent or grandparent of an illegitimate child, shall include such child, and where the workman is an illegitimate child shall include his parents and grandparents;
- "Outworker." (n) "Outworker" shall mean a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired, or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the articles or materials;
- "Regulations." (o) "Regulations" shall mean regulations made by the Board under the authority of this Act; 1914, c. 25, s. 2 (1) (c-o).
- "Workman." (p) "Workman" shall include a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour, or otherwise, but when used in Part I shall not include an outworker or an executive officer of a corporation. 1914, c. 25, s. 2 (1) (p); 1915, c. 24, s. 1 (2); 1917, c. 34, s. 4 (1); 1919, c. 34, s. 2.
- Municipal corporations, etc., and school boards. (2) The exercise and performance of the powers and duties of,—
- (a) a municipal corporation;
- (b) a public utilities commission;

- (c) any other commission having the management and conduct of any work or service owned by or operated for a municipal corporation;
- (d) the board of trustees of a police village; and
- (e) a school board,

shall for the purposes of Part I be deemed the trade or business of the corporation, commission, board of trustees or school board, but the obligation to pay compensation under Part I shall apply only to such part of the trade or business as, if it were carried on by a company or an individual, would be an industry for the time being included in Schedule 1 or Schedule 2, and to workmen employed in or in connection therewith. 1914, c. 25, s. 2 (2).

PART I.

COMPENSATION.

2.—(1) Where in any employment to which this Part applies, personal injury by accident arising out of and in the course of the employment is caused to a workman his employer shall be liable to provide or to pay compensation in the manner and to the extent hereinafter mentioned except where the injury,—

- (a) does not disable the workman for the period of at least seven days from earning full wages at the work at which he was employed, or
- (b) is attributable solely to the serious and wilful misconduct of the workman unless the injury results in death or serious disablement.

(2) Where the accident arose out of the employment, unless the contrary is shown, it shall be presumed that it occurred in the course of the employment, and where the accident occurred in the course of the employment, unless the contrary is shown, it shall be presumed that it arose out of the employment.

(3) Where compensation for disability is payable it shall be computed and be payable from the date of the disability.

(4) This section shall not apply to a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business.

3. Employers in the industries for the time being included in Schedule 2 shall be liable individually to pay the compensation. 1914, c. 25, s. 4.

Employers
liable to
contrib-
ute to
the acci-
dent
fund.

4. Employers in the industries for the time being included in Schedule 1, shall be liable to contribute to the accident fund as hereinafter provided, but shall not be liable individually to pay the compensation. 1914, c. 25, s. 5.

Accident
while
workman
employed
out of
Ontario.

5.—(1) Where the place of business or chief place of business of the employer is situate in Ontario and the residence and usual place of employment of the workman are in Ontario and an accident happens while the workman is employed out of Ontario and his employment out of Ontario has lasted less than six months, the workman or his dependants shall be entitled to compensation under this Part in the same manner and to the same extent as if the accident had happened in Ontario.

Accident
while
workman
out of
Ontario.
temporarily.

(2) Where the place of business or chief place of business of the employer is situate in Ontario and the residence of the workman is out of Ontario but his usual and principal place of employment is in Ontario and an accident happens while the workman is out of Ontario merely for some temporary purpose connected with his employment, the workman or his dependants shall be entitled to compensation under this Part in the same manner and to the same extent as if the accident had happened in Ontario.

Where
employer's
place of
business out
of Ontario.

(3) Where an accident happens out of Ontario and the employer's place of business or chief place of business is situate out of Ontario and the workman is entitled to compensation under the law of the place where the accident happens, compensation shall not be payable to the workman or his dependants whether he is resident within or without Ontario unless his place of employment is within Ontario and he is at the time of the accident out of Ontario merely for some casual or incidental purpose connected with his employment.

Accident on
steamboat,
ship, vessel
or railway.

(4) Where an accident happens out of Ontario on a steamboat, ship or vessel or on a railway and the workman is a resident of Ontario and the work or service rendered by him is required to be performed both within and without Ontario, the workman or his dependants shall be entitled to compensation under this Part as if the accident had happened in Ontario.

Accidents
excluded.

(5) Except as provided in this section no compensation shall be payable under this Part where the accident to the workman happens while he is employed elsewhere than in Ontario. 1927, c. 46, s. 2.

Where em-
ployer in-
dividually
liable.

(6) Compensation payable in respect of an accident happening elsewhere than in Ontario shall, except where the employer has fully contributed to the accident fund in respect of all the wages of workmen in his employ who are engaged in the business or work in which the accident happens,

be paid by the employer individually, and the business or work carried on elsewhere than in Ontario by an employer who has not so contributed to the accident fund shall be deemed to be in Schedule 2. 1915, c. 24, s. 2, *part*.

6.—(1) Where by the law of the country or place in which the accident happens the workman or his dependants are entitled to compensation in respect of it they shall be bound to elect whether they will claim compensation under the law of such country or place or under this Part and to give notice of such election, and if such election is not made and notice given it shall be presumed that they have elected not to claim compensation under this Part.

Where compensation payable by law of foreign country, workman to elect.

(2) Notice of the election, where the compensation under this Part is payable by the employer individually, shall be given to the employer, and where the compensation is payable out of the accident fund to the Board and shall be given in both cases within three months after the happening of the accident, or in case it results in death, within three months after the death or within such longer period as either before or after the expiration of such three months the Board may allow. 1914, c. 25, s. 7.

How election to be made.

7.—(1) Where a dependant is not a resident of Canada he shall not be entitled to compensation unless by the law of the place or country in which he resides the dependants of a workman to whom an accident happens in such place or country if resident in Canada would be entitled to compensation and where such dependants would be entitled to compensation under such law the compensation to which the non-resident dependant shall be entitled under this Part shall not be greater than the compensation payable in the like case under that law. 1914, c. 25, s. 8 (1); 1924, c. 41, s. 2.

Dependants not resident in Canada.

(2) Notwithstanding the provisions of subsection 1 the Board may award such compensation or sum in lieu of compensation to any such non-resident dependant as may be deemed proper and may pay the same out of the accident fund, or order it to be paid by the employer as the case may be. 1914, c. 25, s. 8 (2); 1915, c. 24, s. 3.

Exception.

(3) Notwithstanding any provision elsewhere contained, where a workman in the employ of a railway company has been obliged by the nature of his work to change his residence from Ontario to a place outside of Ontario, the dependants of such workman, who have become non-residents of Ontario by reason thereof, shall in respect of an accident to such workman happening in Ontario, be entitled, while residing in Ontario, to the same compensation as if they were residents of Ontario at the time of the workman's death and this provision shall apply to all pension payments to dependants accruing after the coming into effect of this Act, whether the

Where dependants non-residents.

accident happened before or after that date, and whether the award of compensation has been heretofore or is hereafter made, but shall not entitle any person to claim additional compensation for any period prior to the coming into effect of this Act. 1922, c. 56, s. 2; 1924, c. 41, s. 2, *part*.

Where workman entitled to action against person other than employer, action may be brought.

8.—(1) Where an accident happens to a workman in the course of his employment under such circumstances as entitle him or his dependants to an action against some person other than his employer the workman or his dependants if entitled to compensation under this Part may claim such compensation or may bring such action.

Workman entitled to difference between compensation under Act and amount collected.

(2) If an action is brought and less is recovered and collected than the amount of the compensation to which the workman or his dependants are entitled under this Part the difference between the amount recovered and collected and the amount of such compensation shall be payable as compensation to such workman or his dependants. 1914, c. 25, s. 9 (1, 2).

Subrogation of employer or Board to rights of workman.

(3) If the workman or his dependants elect to claim compensation under this Part the employer, if he is individually liable to pay it, and the Board if the compensation is payable out of the accident fund shall be subrogated to the rights of the workman or his dependants and may maintain an action in his or their names or in the name of the Board against the person against whom the action lies and any sum recovered from him by the Board shall form part of the accident fund. 1914, c. 25, s. 9 (3); 1927, c. 46, s. 3.

How election to be made.

(4) The election shall be made and notice of it shall be given within the time and in the manner provided by section 6. 1914, c. 25, s. 9. (4).

Right of action declared to be taken away as against employer in sched. 1.

(5) No employer in Schedule 1 and no workman of an employer in Schedule 1 or dependant of such workman shall have a right of action against any employer in Schedule 1 in any case within the provisions of subsection 1 but in any case where it appears to the satisfaction of the Board that a workman of an employer in any class in Schedule 1 is injured or killed owing to the negligence of an employer or the workman of an employer in another class in Schedule 1, the Board may direct that the compensation awarded in any such case shall be charged against the class to which such last mentioned employer belongs. 1915, c. 24, s. 4; 1916, c. 31, s. 1.

Employers and contractors.

9.—(1) The workmen of a contractor or sub-contractor executing any work in or for the purposes of an industry under Part I of this Act, carried on by another person, in this subsection and in subsection 2 referred to as the principal, shall be deemed to be the workmen of the principal unless and until such contractor or sub-contractor is, in respect of such work,

assessed, or added and assessed, as the case may be, as an employer in Schedule 1, or, in cases where such contractor or sub-contractor is, in respect of such work, individually liable for payment of compensation, unless and until the Board finds and declares that the responsibility of such contractor or sub-contractor is sufficient protection to his workmen for the benefits provided for by this Act.

(2) Where a principal has made payment of assessment or compensation or furnished medical aid which but for subsection 1 he would not have been liable to pay or furnish, he shall be entitled to reimbursement from the contractor or sub-contractor to such extent as the Board finds such contractor or sub-contractor would have been liable. 1919, c. 34, s. 4 (1).

Right of principal employer to reimbursement from contractor.

(3) Where a person, whether carrying on an industry included in Schedule 1 or not, in this subsection and in subsection 4 referred to as the principal, contracts with any other person, in this section referred to as the contractor, for the execution by or under the contractor of the whole or any part of any work for the principal, it shall be the duty of the principal to see that any sum which the contractor or any sub-contractor is liable to contribute to the accident fund is paid, and if any such principal fails to do so he shall be personally liable to pay it to the Board, and the Board shall have the like powers and be entitled to the like remedies for enforcing payment as it possesses or is entitled to in respect of an assessment. 1915, c. 24, s. 5, *part*.

Liability of principal to pay assessments.

(4) Where the principal is liable to make payment to the Board under subsection 3 he shall be entitled to be indemnified by any person who should have made such payment and shall be entitled to withhold out of any indebtedness due to such person a sufficient amount to answer the same, and all questions as to the right to and the amount of any such indemnity shall be determined by the Board. 1915, c. 24, s. 5, *part*; 1919, c. 34, s. 4 (2).

Right of indemnity.

(5) Nothing in this section shall prevent a workman claiming compensation or the Board collecting contribution to the accident fund from the contractor or any sub-contractor instead of the principal. 1915, c. 24, s. 5, *part*.

Liability of contractor or sub-contractor to contribute.

10. Where compensation is payable out of the accident fund, a member of the family of an employer or the dependants of such member shall not be entitled to compensation unless such member was at the time of the accident carried on the pay roll of the employer and his wages were included in the then last statement furnished to the Board under section 88 nor for the purpose of determining the compensation shall his earnings be taken to be more than the amount of his wages, as shown by such pay roll and statement. 1914, c. 25, s. 11; 1915, c. 24, s. 6.

Member of family of employer employed as workman.

Where employer carried on payroll he and dependants entitled to compensation.

11. Where compensation is payable out of the accident fund and an employer carries himself on his pay roll or an executive officer of a corporation is carried on the pay roll of the corporation at a salary or wage which the Board deems reasonable, but not exceeding the rate of \$2,000 per annum, and it is stated in the pay roll statement furnished to the Board under section 88 that it is desired that such employer or executive officer shall be included as a workman, and the amount of his salary or wages is shown in the said statement and included in the estimate for the year, such employer or executive officer shall be deemed to be a workman within the meaning of this Act, and he or his dependants shall be entitled to compensation accordingly, but for the purpose of determining the compensation his earnings shall not be taken to be more than the amount of his salary or wages as shown by such pay roll and statement. 1915, c. 24, s. 7; 1917, c. 34, s. 4 (2).

No action to be brought to recover compensation.

12. No action shall lie for the recovery of the compensation whether it is payable by the employer individually or out of the accident fund, but all claims for compensation shall be heard and determined by the Board. 1914, c. 25, s. 13.

Workman entitled to compensation residing out of Ontario.

13. If a workman receiving a weekly or other periodical payment ceases to reside in Ontario he shall not thereafter be entitled to receive any such payment unless a medical referee certifies that the disability resulting from the injury is likely to be of a permanent nature and if a medical referee so certifies and the Board so directs the workman shall be entitled quarterly to the amount of the weekly or other periodical payments accruing due if he proves in such manner as may be prescribed by the regulations his identity and the continuance of the disability in respect of which the same is payable. 1914, c. 25, s. 14.

Provisions of Act in lieu of all rights of action against employer.

14.—(1) The provisions of this Part shall be in lieu of all rights and rights of action, statutory or otherwise, to which a workman or his dependants are or may be entitled against the employer of such workman for or by reason of any accident happening to him on or after the 1st day of January, 1915, while in the employment of such employer, and no action in respect thereof shall lie.

Determination of workman's right to bring action.

(2) Any party to an action may apply to the Board for adjudication and determination of the question of the plaintiff's right to compensation under this Part, or as to whether the action is one the right to bring which is taken away by this Part, and such adjudication and determination shall be final and conclusive. 1915, c. 24, s. 8.

Right to compensation may not be waived.

15. It shall not be competent for a workman to agree with his employer to waive or to forego any of the benefits to which he or his dependants are or may become entitled

under this Part and every agreement to that end shall be absolutely void. 1914, c. 25, s. 16.

16.—(1) Where the compensation is payable by an employer individually no agreement between a workman or dependant and the employer for fixing the amount of the compensation or by which the workman or dependant accepts or agrees to accept a stipulated sum in lieu or in satisfaction of it shall be binding on the workman or dependant unless it is approved by the Board. 1914, c. 25, s. 17 (1). Agreement as to compensation not valid unless approved by the Board.

(2) Subsection 1 shall not apply to compensation for temporary disability lasting for less than four weeks, but in such cases the Board may, on the application of the workman or dependant, or of its own motion, set aside the agreement on such terms as may be deemed just. 1914, c. 25, s. 17 (2); 1915, c. 24, s. 9. Exceptions.

(3) Nothing in this section shall be deemed to authorize the making of any such agreement except with respect to an accident that has happened and the compensation to which the workman or dependant has become entitled because of it. 1914, c. 25, s. 17 (3).

17.—(1) It shall not be lawful for an employer, either directly or indirectly, to deduct from the wages of any of his workmen any part of any sum which the employer is or may become liable to pay to the workman as compensation under this Part or to require or to permit any of his workmen to contribute in any manner towards indemnifying the employer against any liability which he has incurred or may incur under this Part. Deduction not to be made from wages.

(2) Every person who contravenes any of the provisions of subsection 1 shall for every such contravention incur a penalty not exceeding \$50 and shall also be liable to repay to the workman any sum which has been so deducted from his wages or which he has been required or permitted to pay in contravention of subsection 1. 1914, c. 25, s. 18. Penalty.

18. Unless with the approval of the Board no sum payable as compensation or by way of commutation of any weekly or other periodical payment in respect of it shall be capable of being assigned, charged or attached, nor shall it pass by operation of law except to a personal representative nor shall any claim be set off against it. 1914, c. 25, s. 19. Compensation not assignable or liable to attachment.

19.—(1) Subject to subsection 5 compensation shall not be payable unless notice of the accident is given as soon as practicable after the happening of it and before the workman has voluntarily left the employment in which he was injured and unless the claim for compensation is made within six months from the happening of the accident or in case of death within six months from the time of death. Notice of accident to be given.

Nature of notice.

(2) The notice shall give the name and address of the workman and shall be sufficient if it states in ordinary language the cause of the injury and where the accident happened.

Service of notice.

(3) The notice may be served by delivering it at or sending it by registered post addressed to the place of business or the residence of the employer, or where the employer is a body of persons, corporate or unincorporate, by delivering it at or sending it by registered post addressed to the employer at the office or if there are more offices than one at any of the offices of such body of persons.

Notice to Board.

(4) Where the compensation is payable out of the accident fund the notice shall also be given to the Board by delivering it to or at the office of the secretary or by sending it to him by registered post addressed to his office. 1914, c. 25, s. 20 (1-4).

Failure to give, or defect in notice not to affect right to compensation in certain cases.

(5) Failure to give the prescribed notice or to make such claim or any defect or inaccuracy in a notice shall not bar the right to compensation if in the opinion of the Board the employer was not prejudiced thereby or where the compensation is payable out of the accident fund if the Board is of opinion that the claim for compensation is a just one and ought to be allowed. 1914, c. 25, s. 20 (5); 1916, c. 31, s. 2.

Workman to submit to examination.

20.—(1) A workman who claims compensation, or to whom compensation is payable under this Part shall if so required by his employer submit himself for examination by a duly qualified medical practitioner provided and paid for by the employer and shall if so required by the Board submit himself for examination by a medical referee.

In accordance with regulations.

(2) A workman shall not be required at the request of his employer to submit himself for examination otherwise than in accordance with the regulations. 1914, c. 25, s. 21.

In case of difference between medical examiners, etc., reference may be made to medical referee.

21.—(1) Where a workman has upon the request of his employer submitted himself for examination, or has been examined by a duly qualified medical practitioner selected by himself, and a copy of the report of the medical practitioner as to the workman's condition has been furnished in the former case by the employer to the workman and in the latter case by the workman to the employer the Board may, on the application of either of them, refer the matter to a medical referee. 1914, c. 25, s. 22 (1).

Certificate of medical referee when final.

(2) The medical referee to whom a reference is made under the next preceding subsection or who has examined the workman by the direction of the Board under subsection 1 of section 20, shall certify to the Board as to the condition of the workman and his fitness for employment, specifying where

necessary the kind of employment and if unfit the cause of such unfitness, and his certificate unless the Board otherwise directs shall be conclusive as to the matters certified. 1914, c. 25, s. 22 (2); 1915, c. 24, s. 10.

(3) If a workman does not submit himself for examination when required to do so as provided by subsection 1 of section 20, or on being required to do so does not submit himself for examination to a medical referee under that subsection or under subsection 1 of this section, or in any way obstructs any examination, his right to compensation or if he is in receipt of a weekly or other periodical payment his right to it shall be suspended until such examination has taken place. 1914, c. 25, s. 22 (3). Failure to submit to examination or obstructing it.

22. Where in any case, in the opinion of the Board, it will be in the interest of the accident fund to provide a special surgical operation or other special medical treatment for a workman, and the furnishing of the same by the Board is, in the opinion of the Board, the only means of avoiding heavy payment for permanent disability, the expense of such operation or treatment may be paid out of the accident fund. 1915, c. 24, s. 11. Special medical treatment in certain cases.

23. Any weekly or other periodical payment to a workman may be reviewed at the request of the employer or of the workman, if the compensation is payable by the employer individually, or, if the compensation is payable out of the accident fund, of the Board's own motion or at the request of the workman and on such review the Board may put an end to or diminish or may increase such payment to a sum not beyond the maximum hereinafter prescribed. 1914, c. 25, s. 23. Review of compensation.

24. Where the workman was at the date of the accident under twenty-one years of age and the review takes place more than six months after the accident the amount of a weekly payment may be increased to the sum to which he would have been entitled if his average earnings had at the date of the accident been equal to what if he had not been injured he would probably have been earning at the date of the review. 1914, c. 25, s. 24. Increase of compensation to workman under 21.

25.—(1) Where the compensation is payable by an employer, individually, the employer may, with the consent of the workman or dependant to whom it is payable and with the approval of the Board, but not otherwise, and where it is payable out of the accident fund the Board may commute the weekly or other periodical payments payable to a workman or a dependant for a lump sum. Commutation of payments for lump sum.

(2) Where the lump sum is payable by the employer individually it shall be paid to the Board. Lump sum to be paid to Board.

Applica-
tion of
lump
sum.

(3) The lump sum may be,—

- (a) applied in such manner as the workman or dependant may direct;
- (b) paid to the workman or dependant;
- (c) invested by the Board and applied from time to time as the Board may deem most for the advantage of the workman or dependant;
- (d) paid to trustees to be used and employed upon and subject to such trusts and for the benefit of such persons as, in case it is payable by the employer individually, the workman or dependant directs and the Board approves, or, if payable out of the accident fund, as may be desired by the workman or dependant and approved by the Board;
- (e) applied partly in one and partly in another or others of the modes mentioned in clauses *a*, *b*, *c* and *d*,

as the Board may determine. 1914, c. 25, s. 25.

Advances
on account
of com-
pensation.

(4) Where the compensation is payable out of the accident fund, the Board may in any case where in its opinion the interest or pressing need of the workman or dependant warrants it, advance or pay to or for the workman or dependant such lump sum as the circumstances warrant and as the Board may determine. 1915, c. 24, s. 32.

Commuta-
tion
of weekly
payments.

26.—(1) Where a weekly or other periodical payment is payable by the employer individually and has been continued for not less than six months, the Board may on the application of the employer allow the liability therefor, to be commuted by the payment of a lump sum of such an amount as, if the disability is permanent, would purchase an immediate annuity from a life insurance company approved by the Board, equal to seventy-five per centum of the annual value of the weekly or other periodical payments, and in other cases of such an amount as the Board may deem reasonable.

Application
of lump
sum.

(2) The sum for which a payment is commuted under subsection 1, shall be paid to the Board and shall be dealt with in the manner provided by section 25. 1914, c. 25, s. 26.

Insurance
company
required to
commute
weekly
or other
periodical
payment.

27.—(1) Where an employer insured by a contract of insurance of an insurance company or any other underwriter is individually liable to make a weekly or other periodical payment to a workman or his dependants and the payment has continued for more than six months the liability shall, if the Board so directs before the expiration of twelve months from the commencement of the disability of the workman or his death, if the accident resulted in death, be commuted

by the payment of a lump sum in accordance with the next preceding section, and the company or underwriter shall pay the lump sum to the Board, and it shall be dealt with in the manner provided by section 25.

(2) This section shall not apply to a contract of insurance entered into before the passing of this Act. 1914, c. 25, s. 27.

28. The Board may require an employer who is individually liable to pay the compensation to pay to the Board a sum sufficient to commute in accordance with section 26, any weekly or other periodical payments which are payable by the employer and such sum shall be applied by the Board in the payment of such weekly or other periodical payments as they from time to time become payable, but if the sum paid to the Board is insufficient to meet the whole of such weekly or other periodical payments the employer shall nevertheless be liable to make such of them as fall due after the sum paid to the Board is exhausted, and if the sum paid is more than sufficient for that purpose the excess shall be returned to the employer when the right to compensation comes to an end unless otherwise ordered by the Board. 1914, c. 25, s. 28; 1915, c. 24, s. 12; 1916, c. 31, s. 3.

Board may require employer to pay sum sufficient to commute.

29. The Board may require an employer who is individually liable to pay the compensation to insure his workmen and keep them insured against accidents in respect of which he may become liable to pay compensation in a company approved by the Board for such amount as the Board may direct and in default of his doing so the Board may cause them to be so insured and may recover the expense incurred in so doing from the employer in the same way as payment of assessments may be enforced. 1914, c. 25, s. 29; 1915, c. 24, s. 13.

Board may require employer to insure his workmen.

30.—(1) Where an employer who is individually liable to pay the compensation is insured against his liability to pay compensation, the Board may require the insurance company or other underwriter to pay the sum which under the contract of insurance such company or underwriter would be liable to pay to the employer in respect of an accident to a workman who becomes, or whose dependants become entitled to compensation under this Part, directly to the Board in discharge or in discharge *pro tanto* of the compensation to which such workman or his dependants are found to be entitled.

Where employer insured Board may require insurer to pay amount payable to employer directly to Board.

(2) In any case to which subsection 1 applies where a claim for compensation is made notice of the claim shall be given to the insurance company or other underwriter and to the employer and the Board shall determine not only the question of the right of the workman or dependant to com-

Notice to be given to insurer.

pensation but also the question whether the whole or any part of it should be paid directly by the insurance company or other underwriter as provided by subsection 1.

S. 25 to
apply.

(3) Section 25 shall apply to the compensation payable to the Board under subsection 1. 1914, c. 25, s. 30.

In case of
permanent
disability
employer
may be
required to
pay capital
sum,

31.—(1) Where the accident causes permanent disability, either total or partial or the death of the workman and the compensation is payable by the employer individually the Board may require the employer to pay to the Board such sum as in its opinion will be sufficient with the interest thereon if invested so as to earn interest at the rate of five per centum per annum to meet the future payments to be made to the workman or his dependants, and such sum when paid to the Board shall be invested by it and shall form a fund to meet such future payments.

or to give
security for
payment
of com-
pensation.

(2) The Board, instead of requiring the employer to make the payment provided for by subsection 1, may require him to give such security as the Board may deem sufficient for the future payments. 1914, c. 25, s. 31.

Requiring
deposits
by employ-
ers in
Schedule 2.

32. The Board, where it deems it requisite for the prompt payment of claims, may require any employer in Schedule 2 to make deposits of money with the Board from time to time, out of which the Board may pay compensation for accidents to workmen of such employer as they occur. 1916, c. 31, s. 4.

Provision
for funds
to pay
increased
compensa-
tion.

33.—(1) The additional moneys necessary to provide for increases of compensation in respect to accidents previously happening may be levied and collected by the Board from the employers either now, previously or hereafter carrying on industries under Part I in such manner and at such time or times as the Board may deem most equitable and most in accordance with the general principles and provisions of this Act, and in the case of Schedule 1 employers, such levy and collection may be by way of addition to the usual assessment or by levy of special or additional assessment or assessments, and in the case of Schedule 2 employers, by way of additional deposit or capitalized amount as may be necessary to provide for such increases.

Power to
grant
exemptions
in certain
cases.

(2) Where by reason of limit of legal liability or for other cause, the Board deems it inequitable or inexpedient to apply the provisions of subsection 1 to any pension award the Board shall have power to exempt the same accordingly. 1920, c. 43, s. 14.

Compensa-
tion not
payable
during
suspension.

34. Where a right to compensation is suspended under the provisions of this Part no compensation shall be payable in respect of the period of suspension. 1914, c. 25, s. 32.

SCALE OF COMPENSATION.

35.—(1) Where death results from an injury the amount of the compensation shall be:— Compensation in case of death.

- (a) The necessary expenses of the burial of the workman not exceeding \$125; 1914, c. 25, s. 33 (1) (a); 1920, c. 43, s. 2.
- (b) Where the widow or an invalid husband is the sole dependant a monthly payment of \$40; 1914, c. 25, s. 33 (1) (b); 1920, c. 43, s. 3.
- (c) Where the dependants are a widow or an invalid husband and one or more children, a monthly payment of \$40, with an additional monthly payment of \$10 to be increased upon the death of the widow or invalid husband to \$15 for each child under the age of sixteen years; 1914, c. 25, s. 33 (1) (c); 1920, c. 43, s. 4; 1922, c. 56, s. 3.
- (d) Where the dependants are children, a monthly payment of \$15 to each child under the age of sixteen years; 1914, c. 25, s. 33 (1) (d); 1920, c. 43, s. 5.
- (e) Where the dependants are persons other than those mentioned in the foregoing clauses, a sum reasonable and proportionate to the pecuniary loss to such dependants occasioned by the death, to be determined by the Board. 1915, c. 24, s. 14 (a); 1920, c. 43, s. 6.

(2) Where the workman leaves no widow or the widow subsequently dies, and it seems desirable to continue the existing household, and an aunt, sister, or other suitable person acts as foster-mother in keeping up such household and maintaining and taking care of the children entitled to compensation in a manner which the Board deems satisfactory, such foster-mother while so doing shall be entitled to receive the same monthly payments of compensation for herself and the children as if she were widow of the deceased, and in such case the children's part of such payments shall be in lieu of the monthly payments which they would otherwise have been entitled to receive. Payment of monthly allowance to foster-mother.

(3) In addition to any other compensation provided for the widow, or where the workman leaves no widow, the foster-mother, as in subsection 2 described, shall be entitled to a lump sum of \$100. 1920, c. 43, s. 7. Lump sum payment.

(4) In the case provided for by clause e of subsection 1, the payments shall continue only so long as in the opinion of the Board it might reasonably have been expected had the workman lived he would have continued to contribute to the support of the dependants, and in any case under the said Duration of payments under clause (e) of subsection 1.

clause compensation may be made wholly or partly in a lump sum or by such form of payment as the Board in the circumstances deems most suitable. 1914, c. 25, s. 33 (2); 1915, c. 24, s. 14 (b); 1919, c. 34, s. 5 (2).

Dependants
to whom
workman
stood in
loco
parentis.

(5) A dependant to whom the workman stood in *loco parentis* or a dependant who stood in *loco parentis* to the workman shall be entitled, as the Board may determine, to share in or receive compensation under clause *c*, clause *d* or clause *e*.

Compensa-
tion to
invalid
child.

(6) Compensation shall be payable to an invalid child without regard to the age of such child, and payments to such child shall continue so long as in the opinion of the Board it might reasonably have been expected had the workman lived he would have continued to contribute to the support of such child. 1917, c. 34, s. 6 (2).

Compensa-
tion to de-
pendants.

(7) Where there are both total and partial dependants the compensation may be allotted partly to the total and partly to the partial dependants.

Board may
apply pay-
ment for
benefit of
children.

(8) Where the Board is of opinion that for any reason it is necessary or desirable that a payment in respect of a child should not be made directly to its parent, the Board may direct that the payment be made to such person or be applied in such manner as the Board may deem most for the advantage of the child. 1914, c. 25, s. 33 (3, 4).

Compensa-
tion not
to exceed
percentage
of wages
in certain
cases.

(9) Exclusive of the expenses of burial of the workman the compensation payable as provided by subsection 1, shall not in any case exceed sixty-six and two-thirds per centum of the average monthly earnings of the workman mentioned in section 38, and if the compensation payable under that subsection would in any case exceed that percentage it shall be reduced accordingly, and where several persons are entitled to monthly payments the payments shall be reduced proportionately, but this subsection shall not operate to reduce the total monthly compensation below the rate of \$12.50 per week, where the dependants are a widow or an invalid husband and one or more children. 1914, c. 25, s. 33 (5); 1915, c. 24, s. 14 (c); 1920, c. 43, s. 8; 1923, c. 31, s. 2.

Marriage
of widow.

36.—(1) If a dependant widow marries, the monthly payments to her shall cease, but she shall be entitled in lieu of them to a lump sum equal to the monthly payments for two years and such lump sum shall be payable within one month after the day of her marriage.

Exception.

(2) Subsection 1 shall not apply to payments to a widow in respect of a child. 1914, c. 25, s. 34.

When pay-
ments to
child to
cease.

37. Subject to the provisions of subsection 6 of section 35 a monthly payment in respect of a child shall cease when the child attains the age of sixteen years or dies. 1914, c. 25, s. 35; 1917, c. 34, s. 7.

38. Where permanent total disability results from the injury the amount of the compensation shall be a weekly payment during the life of the workman equal to sixty-six and two-thirds per centum of his average weekly earnings during the previous twelve months if he has been so long employed, but if not then for any less period during which he has been in the employment of his employer. 1914, c. 25, s. 37; 1920, c. 43, s. 9.

39.—(1) Where permanent partial disability results from the injury the compensation shall be a weekly payment of sixty-six and two-thirds per centum of the difference between the average weekly earnings of the workman before the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident and the compensation shall be payable during the lifetime of the workman. 1914, c. 25, s. 38 (1); 1920, c. 43, s. 10.

(2) Where the impairment of the earning capacity of the workman does not exceed ten per centum of his earning capacity instead of such weekly payment the Board shall, unless in the opinion of the Board it would not be to the advantage of the workman to do so, direct that such lump sum as may be deemed to be the equivalent of it shall be paid to the workman. 1914, c. 25, s. 38 (2).

(3) Where deemed just, the impairment of earning capacity may be estimated from the nature of the injury, having always in view the workman's fitness to continue the employment in which he was injured or to adapt himself to some other suitable occupation. 1917, c. 34, s. 8.

40. Where temporary total disability results from the injury the compensation shall be the same as that prescribed by section 38, but shall be payable only so long as the disability lasts. 1914, c. 25, s. 39.

41. Where temporary partial disability results from the injury the compensation shall be the same as that prescribed by section 39, but shall be payable only so long as the disability lasts and subsection 2 of that section shall apply. 1914, c. 25, s. 40.

42. The amount of compensation to which an injured workman shall be entitled for temporary total or permanent total disability under the provisions of this Part shall not be less than \$12.50 per week or, where his average earnings are less than \$12.50 per week, the amount of such earnings, and for temporary partial or permanent partial disability a corresponding amount in proportion to the impairment of earning capacity. 1920, c. 43, s. 11.

How average earnings to be computed

43.—(1) Average earnings shall be computed in such a manner as is best calculated to give the rate per week or month at which the workman was remunerated but not so as in any case to exceed the rate of \$2,000 per annum.

In case of shortness of service or its casual nature.

(2) Where owing to the shortness of the time during which the workman was in the employment of his employer or the casual nature of his employment or the terms of it, it is impracticable to compute the rate of remuneration as of the date of the accident regard may be had to the average weekly or monthly amount which during the twelve months previous to the accident was being earned by a person in the same grade employed at the same work by the same employer, or if there is no person so employed then by a person in the same grade employed in the same class of employment and in the same locality.

Where two or more employers.

(3) Where the workman has entered into concurrent contracts of service with two or more employers under which he worked at one time for one of them and at another time for another of them his average earnings shall be computed on the basis of what he would probably have been earning if he had been employed solely in the employment of the employer for whom he was working at the time of the accident.

Meaning of employment by same employer.

(4) Employment by the same employer shall mean employment by the same employer in the grade in which the workman was employed at the time of the accident uninterrupted by absence from work due to illness or any other unavoidable cause.

Special expenses not to be included.

(5) Where the employer was accustomed to pay the workman a sum to cover any special expenses entailed on him by the nature of his employment that sum shall not be reckoned as part of his earnings. 1914, c. 25, s. 41 (1-5).

Board to award compensation in certain cases.

(6) Where in any case it seems more equitable, the Board may award compensation, having regard to the earnings of the workman at the time of the accident. 1915, c. 24, s. 16.

Matters to be considered in fixing payments.

44.—(1) In fixing the amount of a weekly or monthly payment regard shall be had to any payment, allowance or benefit which the workman may receive from his employer during the period of his disability, including any pension, gratuity or other allowance provided wholly at the expense of the employer.

Payment to employer out of accident fund.

(2) Where the compensation is payable out of the accident fund any sum deducted from the compensation under subsection 1 may be paid to the employer out of the accident fund. 1914, c. 25, s. 42.

Provision for fortnightly or monthly payments.

45. The Board may wherever it is deemed advisable provide that the payments of compensation may be fortnightly or monthly instead of weekly or where the workman or de-

pendant is not a resident of Ontario or ceases to reside therein may otherwise fix the periods of payment or commute the compensation as the Board may deem proper. 1914, c. 25, s. 43; 1915, c. 24, s. 17.

46. The Board, for the purpose of enabling the workman to obtain an artificial limb, or in any other case where it deems it proper, may, at any time or times, make or direct partial commutation or lump sum payment of his compensation, or otherwise alter the form of payment, as in the circumstances seems most for his advantage. 1919, c. 34, s. 6.

47. Where it is found that the widow to whom compensation has been awarded is a common prostitute or is openly living with any man in the relation of man and wife without being married to him, the Board may discontinue or suspend compensation to such widow or divert such compensation in whole or in part to or for the benefit of any other dependant or dependants of the deceased workman. 1925, c. 43, s. 4 (1).

48. Where a workman or a dependant is an infant under the age of twenty-one years or under any other legal disability the compensation to which he is entitled may be paid to such person or be applied in such manner as the Board may deem most for his advantage. 1914, c. 25, s. 44.

MEDICAL AID.

49.—(1) Every workman entitled to compensation under this Part, or who would have been so entitled had he been disabled for seven days, shall be entitled to such medical and surgical aid and hospital and skilled nursing services as may be necessary as a result of the injury, and shall be entitled to such artificial member or members and apparatus as may be necessary as a result of the injury and to have the same kept in repair for a period of one year. 1917, c. 34, s. 9, *part*; 1919, c. 34, s. 7 (1); 1920, c. 43, s. 13.

(2) In this Act "medical aid" shall mean the medical and surgical aid and hospital and skilled nursing services and the artificial member or members and apparatus and repair above mentioned. 1917, c. 34, s. 9, *part*; 1920, c. 43, s. 13.

(3) In the industries in Schedule 1 such medical aid shall be furnished or arranged for by the Board or as it may direct or approve and shall be paid for by the Board out of the accident fund, and the necessary amount shall be included in the assessments levied upon the employers.

(4) In the industries in Schedule 2 such medical aid shall be furnished and paid for by the employers individually, but any employer failing to furnish satisfactory medical aid shall

be liable, by the order of the Board, to pay for such medical aid as may be procured by the workman or by anyone for him or as may be provided by the Board.

Question
to be deter-
mined
by Board.

(5) All questions as to the necessity, character, and sufficiency of any medical aid furnished or to be furnished shall be determined by the Board.

Amount of
charges.

(6) The fees or charges for such medical aid shall not be more than would be properly and reasonably charged to the workman if himself paying the bill, and, except in the case of an employer individually liable and himself furnishing the medical aid, the amount thereof shall be fixed and determined by the Board, and no action for any amount larger than that fixed by the Board shall lie in respect of any medical aid herein provided for.

Contribu-
tions from
employees
forbidden.

(7) It shall not be lawful for any employer, directly or indirectly, to collect or receive or retain from any workman any contribution toward the expense of medical aid, and every person contravening this provision shall for every such contravention be liable to a penalty not exceeding \$50 and shall also be liable, upon the order of the Board, to reimburse the workman treble the amount of any sum so collected, received, or retained.

Penalty.

Where
employer
arranges for
supplying
medical aid.

(8) Where any employer has now or hereafter establishes in connection with any industry carried on by him an arrangement for furnishing medical aid to his workmen which in the opinion of the Board is at least as favourable to the workmen as that herein provided for, the Board, after investigating the facts and considering the wishes of both workmen and employer, may approve such arrangement, and as long as such approval remains unrevoked such arrangement may be continued in lieu of the medical aid herein provided for, and if the industry is in Schedule 1 the employer shall be entitled to such reimbursement out of the accident fund or to such reduction in his rate of assessment as the Board shall deem just.

Duty of
employer
under
Rev. Stat.
c. 262 not
affected.

(9) Nothing in this Act shall affect any obligation upon the employer under *The Public Health Act* or any regulation made thereunder, but notwithstanding anything therein contained the employer shall not be entitled, directly or indirectly, to collect, receive, or retain from any workman any contribution toward the expense of medical aid.

First aid
appliances
may be
directed
by Board.

(10) Employers in any industries in which it is deemed proper may be required by the Board to maintain as may be directed by the Board such first aid appliances and service as the Board may direct, and the Board may make such order respecting the expense thereof as may be deemed just. 1917, c. 34, s. 9, *part*.

(11) Every employer shall at his own expense furnish to any workman injured in his employment, who is in need of it, immediate conveyance and transportation to a hospital, or to a physician, or to the workman's home, and any employer failing so to do shall be liable, by order of the Board, to pay for such conveyance and transportation as may be procured by the workman or by anyone for him, or as may be provided by the Board. 1919, c. 34, s. 7 (2).

(12) Where in conjunction with or apart from the medical aid to which workmen are to be entitled free of charge further or other service or benefit is, or is proposed to be given or arranged for, any question arising as to whether or to what extent any contribution from workmen is or would be one prohibited by this Act shall be determined by the Board. 1917, c. 34, s. 9, *part*.

50. Every physician, surgeon and hospital official attending, consulted respecting, or having the care of any workman shall furnish to the Board from time to time, without additional charge, such reports as may be required by the Board in respect of such workman. 1917, c. 34, s. 9, *part*.

REHABILITATION.

51. To aid in getting injured workmen back to work and to assist in lessening or removing any handicap resulting from their injuries, the Board may take such measures and make such expenditures as it may deem necessary or expedient, and the expense thereof shall be borne, in Schedule 1 cases, out of the accident fund, and in Schedule 2 cases by the employer individually, and may be collected in the same manner as compensation or expenses of administration; provided that the total expenditure under the provisions of this section shall not exceed \$100,000 in any calendar year. 1924, c. 41, s. 4.

THE WORKMEN'S COMPENSATION BOARD.

52. There is hereby constituted a commission for the administration of this Part to be called "The Workmen's Compensation Board," which shall consist of three members to be appointed by the Lieutenant-Governor in Council and shall be a body corporate. 1914, c. 25, s. 45; 1915, c. 24, s. 18.

53.—(1) One of the commissioners shall be appointed by the Lieutenant-Governor in Council to be the Chairman of the Board and he shall hold that office while he remains a member of the Board and another of the commissioners shall be appointed by the Lieutenant-Governor in Council vice-chairman of the Board.

When vice-chairman may act.

(2) In the absence of the Chairman or in case of his inability to act or if there is a vacancy in the office, the vice-chairman may act as and shall have all the powers of the chairman. 1914, c. 25, s. 46.

Appointment of commissioner *pro tempore*.

54.—(1) In the case of the death, illness or absence from Ontario of a commissioner or of his inability to act from any cause the Lieutenant-Governor in Council may appoint some person to act *pro tempore* in his stead and the person so appointed shall have all the powers and perform all the duties of a commissioner.

Application of subs 1.

(2) Subsection 1 shall apply in the case of the chairman of the Board as well as in the case of any other member of it. 1914, c. 25, s. 47.

Presumption where vice-chairman has acted.

55. Where the vice-chairman appears to have acted for or instead of the Chairman it shall be conclusively presumed that he so acted for one of the reasons mentioned in the next preceding section. 1914, c. 25, s. 48.

Tenure of office of commissioners.

56. Each commissioner shall, subject to section 57, hold office during good behaviour but may be removed at any time for cause. 1914, c. 25, s. 49.

Age limit.

57. Unless otherwise directed by the Lieutenant-Governor in Council a commissioner shall cease to hold office when he attains the age of seventy-five years. 1914, c. 25, s. 50.

Commissioners to give whole time to duties.

58. Each of the commissioners shall devote the whole of his time to the performance of his duties under this Part. 1914, c. 25, s. 51.

Salaries.

59. The salary of the Chairman shall be \$10,000 per annum, the salary of the vice-chairman shall be \$8,500 per annum, and the salary of the other commissioner shall be \$7,500 per annum, and such salaries shall be payable out of the Consolidated Revenue Fund. 1914, c. 25, s. 52.

Quorum.

60. The presence of two commissioners shall be necessary to constitute a quorum of the Board. 1914, c. 25, s. 53.

Vacancy not to impair authority if two members remain.

61. A vacancy in the Board shall not if there remain two members of it impair the authority of such two members to act. 1914, c. 25, s. 54.

Powers of Board.

62. The Board shall have the like powers as the Supreme Court for compelling the attendance of witnesses and of examining them under oath, and compelling the production of books, papers, documents and things. 1914, c. 25, s. 55.

63.—(1) A commissioner shall not directly or indirectly,—Commissioners to be disqualified in certain cases.

(a) have, purchase, take or become interested in any industry, to which this Part applies or any bond, debenture or other security of the person owning or carrying it on;

(b) be the holder of shares, bonds, debentures or other securities of any company which carries on the business of employers' liability or accident insurance;

(c) have any interest in any device, machine, appliance, patented process or article which may be required or used for the prevention of accidents.

(2) If any such industry, or interest therein, or any such share, bond, debenture, security, or thing comes to or becomes vested in a commissioner by will or by operation of law and he does not within three months thereafter sell and absolutely dispose of it he shall cease to hold office. 1914, c. 25, s. 56.

64. The offices of the Board shall be situated in the City of Toronto and its sittings shall be held there, except where it is expedient to hold sittings elsewhere, and in that case sittings may be held in any part of Ontario. 1914, c. 25, s. 57.Offices of Board and sittings.

65. The commissioners shall sit at such times and conduct their proceedings in such manner as they may deem most convenient for the proper discharge and speedy despatch of business. 1914, c. 25, s. 58.Proceedings of Board.

66.—(1) The Board shall appoint a secretary and a chief medical officer and may appoint such auditors, actuaries, accountants, inspectors, medical referees, other officers, clerks and servants as the Board may deem necessary for carrying out the provisions of this Part and may prescribe their duties and, subject to the approval of the Lieutenant-Governor in Council, may fix their salaries. 1914, c. 25, s. 59 (1); 1915, c. 24, s. 19.Appointment of secretary and officers.

(2) Every person so appointed shall hold office during the pleasure of the Board. 1914, c. 25, s. 59 (2).Tenure of office.

67.—(1) The Board shall have exclusive jurisdiction to examine into, hear and determine all matters and questions arising under this Part and as to any matter or thing in respect to which any power, authority or discretion is conferred upon the Board, and the action or decision of the Board thereon shall be final and conclusive and shall not be open to question or review in any court and no proceedings by or before the Board shall be restrained by injunction, prohibition or other process or proceeding in any court or be removable by *certiorari* or otherwise into any court.Jurisdiction of Board.

(2) Without thereby limiting the generality of the provisions of subsection 1, it is declared that such exclusive jurisdiction shall extend to determining,—

(a) whether any industry or any part, branch or department of any industry falls within any of the classes for the time being included in Schedule 1, and if so which of them;

(b) whether any industry or any part, branch or department of any industry falls within any of the classes for the time being included in Schedule 2, and if so which of them;

(c) whether any part of any such industry constitutes a part, branch or department of an industry within the meaning of Part 1.

Power to reconsider.

(3) Nothing in subsection 1 shall prevent the Board from reconsidering any matter which has been dealt with by it or from rescinding, altering or amending any decision or order previously made, all of which the Board shall have authority to do. 1914, c. 25, s. 60.

Principles upon which board to decide cases.

(4) The decisions of the Board shall be upon the real merits and justice of the case, and it shall not be bound to follow strict legal precedent. 1917, c. 34, s. 10.

Certificate of secretary as evidence.

68. Every copy of or extract from an entry in any book or record of the Board, and of any document filed with the Board, certified by the secretary of the Board to be a true copy or extract, shall be received in any court as *prima facie* evidence of the matter so certified without proof of the secretary's appointment, authority, or signature. 1917, c. 34, s. 11.

Power of Board as to awarding compensation for expenses.

69. The Board may award such sum as it may deem reasonable to the successful party to a contested claim for compensation or to any other contested matter as compensation for the expenses he has been put to by reason of or incidental to the contest and an order of the Board for the payment by an employer of any sum so awarded when filed in the manner provided by section 71 shall become a judgment of the court in which it is filed and may be enforced accordingly. 1914, c. 25, s. 61.

Board may act on report of officers.

70.—(1) The Board may act upon the report of any of its officers and any enquiry which it shall be deemed necessary to make may be made by any one of the commissioners or by an officer of the Board or some other person appointed to make the enquiry, and the Board may act upon his report as to the result of the inquiry.

(2) The person appointed to make the inquiry shall for the purposes of the inquiry have all the powers conferred upon the Board by section 62. 1914, c. 25, s. 62.

71. An order of the Board for the payment of compensation by an employer who is individually liable to pay the compensation or any other order of the Board for the payment of money made under the authority of this Part, or a copy of any such order certified by the secretary to be a true copy may be filed with the clerk of any county or district court and when so filed shall become an order of that court and may be enforced as a judgment of the court. 1914, c. 25, s. 63.

Enforcement of orders of Board.

72. For the duties performed by him in connection with the filing of an order or certificate of the Board pursuant to section 71 or section 106 such clerk shall be entitled to a fee of \$1, and, notwithstanding any other provision or rule, any proceeding provided for by either of the said sections may be carried on by the Board by post without the necessity of personal attendance at any office. 1917, c. 34, s. 12.

Fees of clerk of county or district court on filing order of Board.

73.—(1) The Board may make such regulations as may be deemed expedient for carrying out the provisions of this Part and to meet cases not specially provided for by this Part, and a certified copy of every regulation so made shall be transmitted forthwith to the Provincial Secretary and any regulation may within one month after it has been received by the Provincial Secretary be disallowed by the Lieutenant-Governor in Council.

Regulations.

Power to Lieutenant-Governor to disallow.

(2) Every regulation which is approved by the Lieutenant-Governor in Council shall immediately after approval or on the day named by him for that purpose become effective, and after the period for disallowance has expired every other regulation which has not been disallowed shall become effective and every regulation which has become effective shall be forthwith published in the *Ontario Gazette*. 1914, c. 25, s. 64 (1, 2).

Publication.

(3) Every person who contravenes any such regulation after it has become effective or any rule of an association formed as provided by section 114, which has been approved and ratified as provided by that section shall for every contravention incur a penalty not exceeding \$50, but no prosecution for any such contravention shall be taken without leave of the Board. 1914, c. 25, s. 64 (3); 1916, c. 31, s. 5.

Penalty.

74. The accounts of the Board shall be audited by the Provincial Auditor or by an auditor appointed by the Lieutenant-Governor in Council for that purpose and the salary or remuneration of the last mentioned auditor shall be paid by the Board. 1914, c. 25, s. 65.

Audit of accounts.

75.—(1) The Board shall on or before the 15th day of January in each year make a report to the Lieutenant-Governor of its transactions during the next preceding calendar year and such report shall contain such particulars as the Lieutenant-Governor in Council may prescribe.

Report to Lieutenant-Governor.

Report to
be laid
before
Assembly.

(2) Every such report shall be forthwith laid before the Assembly if the Assembly is then in session and if it is not then in session within fifteen days after the opening of the next session. 1914, c. 25, s. 66.

Superin-
tendent of
Insurance
to examine
into affairs
and business
of Board.

76. The Superintendent of Insurance or an officer of his Department named by him for that purpose shall once in each year and oftener if so required by the Lieutenant-Governor in Council examine into the affairs and business of the Board for the purpose of determining as to the sufficiency of the accident fund and shall report thereon to the Lieutenant-Governor in Council. 1914, c. 25, s. 67.

CONTRIBUTION BY THE PROVINCE.

Provincial
grant to-
wards costs
of adminis-
tration.

77. To assist in defraying the expenses incurred in the administration of this Part there shall be paid to the Board out of the Consolidated Revenue Fund such annual sum not exceeding \$100,000 as the Lieutenant-Governor in Council may direct. 1914, c. 25, s. 68.

ACCIDENT FUND.

How acci-
dent fund
to be
provided.
Compensa-
tion pay-
able out of
accident
fund in
certain
cases.

78.—(1) An accident fund shall be provided by contributions to be made in the manner hereinafter provided, by the employers in the classes or groups of industries, for the time being included in Schedule 1, and compensation payable in respect of accidents which happen in any industry, included in any of such classes or groups, shall be payable and shall be paid out of the accident fund.

Industries
in Schedule
2 not to
contribute.

(2) Notwithstanding the generality of the description of the classes for the time being included in Schedule 1 none of the industries included in Schedule 2 shall form part of or be deemed to be included in any of such classes, unless it is added to Schedule 1 by the Board under the authority conferred by this Part. 1914, c. 25, s. 69.

Payment of
compensa-
tion out of
reserves or
Consolidated
Revenue
Fund.

79. Where at any time there is not money available for payment of the compensation which has become due, without resorting to the reserves the Board may pay such compensation out of the reserves and shall make good the amount withdrawn from the reserves by making a special assessment upon the employers liable to provide the compensation or by including it in a subsequent annual assessment, or where it is for any reason deemed inexpedient to withdraw the amount required from the reserves the Lieutenant-Governor in Council may direct that the same be advanced out of the Consolidated Revenue Fund and in that case the amount advanced shall be collected by a special assessment and when collected shall be paid over to the Treasurer of Ontario. 1914, c. 25, s. 70.

80. It shall be the duty of the Board at all times to maintain the accident fund so that with the reserves, exclusive of the special reserve, it shall be sufficient to meet all the payments to be made out of the fund in respect of compensation as they become payable and so as not unduly or unfairly to burden the employers in any class in future years with payments which are to be made in those years in respect of accidents which have previously happened. 1914, c. 25, s. 71.

81.—(1) Subject to section 102 it shall not be obligatory upon the Board to provide and maintain a reserve fund which shall at all times be equal to the capitalized value of the payments of compensation which will become due in future years unless the Board shall be of opinion that it is necessary to do so in order to comply with the provisions of section 80.

(2) It shall not be necessary that the reserve fund shall be uniform as to all classes but subject to sections 80 and 102 it shall be discretionary with the Board to provide for a larger reserve fund in one or more of the classes than in another or others of them. 1914, c. 25, s. 72.

82. If any trade or business connected with the industries of :—

Lumbering, mining, quarrying, fishing, manufacturing, building, construction, engineering, transportation, operation of electric power lines, waterworks and other public utilities, navigation, operation of boats, ships, tugs and dredges, operation of grain elevators and warehouses, teaming, scavenging and street cleaning, painting, decorating and renovating, dyeing and cleaning,

or any occupation incidental thereto or immediately connected therewith, not included in Schedule 2, is not included in any of the classes mentioned in Schedule 1, the Board shall assign it to an appropriate class or form an additional class or classes embracing the trades or businesses not so included, and until that is done except in so far as it may be otherwise provided by the regulations such trades and businesses shall together constitute a separate group or class and shall be deemed to be included in Schedule 1. 1914, c. 25, s. 73.

83.—(1) The Board shall have jurisdiction and authority to,—

(a) re-arrange any of the classes for the time being included in Schedule 1, and withdraw from any class any industry included in it and transfer it wholly or partly to any other class or form it into a separate class, or exclude it from the operation of Part I;

Establish-
ing other
classes.

(b) establish other classes including any of the industries which are for the time being included in Schedule 2, or are not included in any of the classes in Schedule 1;

Adding to
classes.

(c) add to any of the classes for the time being included in Schedule 1, any industry which is not included in any of such classes.

Apportion-
ment of
burden of
assessment
according
to hazard
of busi-
ness, etc.

(2) Where in the opinion of the Board the hazard to workmen in any of the industries embraced in a class is less than that in another or others of such industries, or where for any other reason it is deemed proper to do so, the Board may sub-divide the class into sub-classes and if that is done the Board shall fix the percentages or proportions of the contributions to the accident fund which are to be payable by the employers in each sub-class.

Separate
accounts
to be kept
for each
class and
sub-class.

(3) Separate accounts shall be kept of the amounts collected and expended in respect of every class and sub-class, but for the purpose of paying compensation the accident fund shall, nevertheless, be deemed one and indivisible.

Varying
amounts of
assessment
in certain
cases.

(4) Where a greater number of accidents has happened in any industry than in the opinion of the Board ought to have happened if proper precautions had been taken for the prevention of accidents in it, or where in the opinion of the Board the ways, works, machinery or appliances in any industry are defective, inadequate or insufficient the Board may so long as such condition in its opinion continues to exist add to the amount of any contribution to the accident fund for which an employer is liable in respect of such industry such a percentage thereof as the Board may deem just and may assess and levy the same upon such employer, or the Board may exclude such industry from the class in which it is included, and if it is so excluded the employer shall be individually liable to pay the compensation to which any of his workmen or their dependants may thereafter become entitled and such industry shall be included in Schedule 2.

Additional
percentage.

(5) Any additional percentage levied and collected under the next preceding subsection shall be added to the accident fund or applied in reduction of the assessment upon the other employers in the class or sub-class to which the employer from whom it is collected belongs as the Board may determine. 1914, c. 25, s. 74.

Collection
and applica-
tion of ad-
ditional per-
centage.

Withdraw-
ing small
industries
from
classes.

84.—(1) The Board may in the exercise of the powers conferred by the next preceding section withdraw or exclude from a class industries in which not more than a stated number of workmen are usually employed and may afterwards add them to the class or classes from which they have been

withdrawn, and any industry so withdrawn or excluded shall not thereafter be deemed to be included in Schedule 1, but no withdrawal or exclusion under the authority of this subsection shall have the effect of excluding any industry from Schedule 2. 1914, c. 25, s. 75 (1); 1919, c. 34, s. 8 (1).

(2) Where industries are withdrawn or excluded from a class under the authority of subsection 1, an employer in any of them may, nevertheless, elect to become a member of the class to which but for the withdrawal or exclusion he would have belonged, and if he so elects he shall be a member of that class and as such liable to contribute to the accident fund, and his industry shall be deemed to be embraced in Schedule 1. Employers in industries withdrawn under subs. 1 may elect to become members of class.

(3) Notice of the election shall be given to the secretary of the Board and the election shall be deemed to have been made when the notice is received by him. 1914, c. 25, s. 75 (2, 3). Notice of election.

(4) A workman in any industry excluded under the authority of subsection 1 may notify the secretary of the Board that he desires such industry to be included in Schedule 1, and such notice upon receipt thereof by the secretary shall have the same effect as a notice of election from the employer. 1919, c. 34, s. 8 (2). Election of workman.

85. The powers conferred by the next preceding two sections may be exercised from time to time and as often as in the opinion of the Board occasion may require. 1914, c. 25, s. 76. Powers may be exercised as occasion requires.

86.—(1) The Board may, upon the application of an employer, add to Schedule 1, for such time and upon such terms and conditions as the Board may determine, any industry or part of an industry, or department of work or service, of such employer. Additions to Schedule 1.

(2) The Board may, upon the application of an employer, add to Schedule 2, for such time and upon such terms and conditions as the Board may determine, any industry or part of an industry, or department of work or service, of such employer not in Schedule 1. 1916, c. 31, s. 6. Additions to Schedule 2.

87. A regulation or order made by the Board under the authority of clause *a* or clause *b* of subsection 1 of section 83, shall not have any force or effect unless approved by the Lieutenant-Governor in Council, and when so approved it shall be published in the *Ontario Gazette* and shall take effect on the expiration of one month from the first publication of it in the *Ontario Gazette*. 1914, c. 25, s. 77. When regulations become effective. Publication.

STATEMENTS TO BE FURNISHED BY EMPLOYERS.

Statements
to be fur-
nished by
employers.

88.—(1) Subject to the regulations every employer shall yearly on or before such date as shall be prescribed by the Board, and at such other time or times as it may by order or regulation of the Board be required, prepare and transmit to the Board a statement of the amount of the wages earned by all his employees during the year then last past or any part thereof specified by the Board and of the amount which he estimates he will expend for wages during the then current year or any part thereof specified by the Board, and such additional information as the Board may require, both verified by the statutory declaration of the employer or the manager of the business, or where the employer is a corporation by an officer of the corporation having a personal knowledge of the matters to which the declaration relates. 1914, c. 25, s. 78 (1); 1915, c. 24, s. 20.

Employer
to keep
account of
wages
paid.

(2) Every employer shall keep in such form and with such detail as may be required for the purposes of this Act a careful and accurate account of all wages paid to his employees and such account shall be kept within the Province and shall be produced to the Board and its officers when so required. 1916, c. 31, s. 7 (a); 1917, c. 34, s. 13.

Separate
statements
as to
branches,
etc.

(3) Where the business of the employer embraces more than one branch of business or class of industry the Board may require separate statements to be made as to each branch or class of industry, and such statements shall be made, verified, and transmitted as provided by subsection 1.

Failure to
furnish
statements.

(4) If any employer does not make and transmit to the Board the prescribed statement within the prescribed time the Board may base any assessment or supplementary assessment thereafter made upon him on such sum as in its opinion is the probable amount of the payroll of the employer and the employer shall be bound thereby, but if it is afterwards ascertained that such amount is less than the actual amount of the pay roll the employer shall be liable to pay to the Board the difference between the amount for which he was assessed and the amount for which he would have been assessed on the basis of his pay roll. 1914, c. 25, s. 78 (2, 3).

Conse-
quences of
default in
furnishing
state-
ments.

(5) If an employer does not comply with the provisions of subsection 1, subsection 2 or subsection 3, or if any statement made in pursuance of their provisions is not a true and accurate statement of any of the matters required to be set forth in it the employer for every such non-compliance and for every such statement shall incur a penalty not exceeding \$500, and default or delay in furnishing any such statement or insufficiency of estimate of expenditure for wages shall also render the employer liable to pay an additional percentage of assessment or to pay interest, as fixed by the Board. 1914, c. 25, s. 78 (4); 1916, c. 31, s. 7 (b); 1919, c. 34, s. 9.

89.—(1) Every municipal assessor of a township, town or village, shall yearly, on or before the last day for completing his assessment roll make a return to the Board upon forms provided by the Board for the purpose showing the names, addresses, nature of business, and usual number of employees, of all employers of labour carrying on in the municipality any industry or business other than farming or mercantile business.

Municipal assessors to return employees.

(2) The Board may make remuneration for such return out of the accident fund. 1916, c. 31, s. 8.

Payment of assessors.

90.—(1) The Board and any member of it, and any officer or person authorized by it for that purpose shall have the right to examine the books and accounts of the employer and to make such other enquiry as the Board may deem necessary for the purpose of ascertaining whether any statement furnished to the Board under the provisions of section 88 is an accurate statement of the matters which are required to be stated therein or of ascertaining the amount of the pay roll of any employer or of ascertaining whether any industry or person is under the operation of Part I and whether in Schedule 1 or Schedule 2 and for the purpose of any such examination and inquiry the Board and the person so appointed shall have all the powers which may be conferred on a commissioner appointed under *The Public Inquiries Act*, 1914, c. 25, s. 79 (1) ; 1915, c. 24, s. 21.

Examination of accounts and books of employer.

Rev. Stat. c. 20.

(2) An employer and every other person who obstructs or hinders the making of the examination and inquiry mentioned in subsection 1 or refuses to permit it to be made shall incur a penalty not exceeding \$500. 1914, c. 25, s. 79 (2).

Penalty for obstruction.

(3) Every member of the Board and every officer or person authorized by it to make examination or inquiry under this section shall have power and authority to require and take affidavits, affirmations or declarations as to any matter of such examination or inquiry and to take statutory declarations required under section 88 and in all such cases to administer oaths, affirmations and declarations and certify to the same having been made. 1915, c. 24, s. 21.

Officers of Board authorized to take declarations.

91.—(1) If a statement is found to be inaccurate the assessment shall be made on the true amount of the pay roll as ascertained by such examination and enquiry or if an assessment has been made against the employer on the basis of his pay-roll being as shown by the statement the employer shall pay to the Board the difference between the amount for which he was assessed and the amount for which he would have been assessed if the amount of the pay-roll had been truly stated, and by way of penalty a sum equal to such difference.

Assessment may be made to correspond with pay-rolls.

Penalty.

Board may
relieve
from
penalty.

(2) The Board if satisfied that the inaccuracy of the statement was not intentional and that the employer honestly desired to furnish an accurate statement, may relieve him from the payment of the penalty provided for by subsection 1 or any part of it. 1914, c. 25, s. 80.

Board to
have right
to inspect
premises of
employer.

92.—(1) The Board and any member of it and any officer or person authorized by it for that purpose shall have the right at all reasonable hours to enter into the establishment of any employer who is liable to contribute to the accident fund and the premises connected with it and every part of them for the purpose of ascertaining whether the ways, works, machinery or appliances therein are safe, adequate and sufficient and whether all proper precautions are taken for the prevention of accidents to the workmen employed in or about the establishment or premises and whether the safety appliances or safeguards prescribed by law are used and employed therein, or for any other purpose which the Board may deem necessary for the purpose of determining the proportion in which such employer should contribute to the accident fund.

Penalty for
obstruction.

(2) An employer and every other person who obstructs or hinders the making of any inspection made under the authority of subsection 1, or refuses to permit it to be made, shall incur a penalty not exceeding \$500. 1914, c. 25, s. 81.

Information
obtained
not to be
divulged.

93.—(1) No officer of the Board and no person authorized to make an inquiry under this Part shall divulge or allow to be divulged except in the performance of his duties or under the authority of the Board any information obtained by him or which has come to his knowledge in making or in connection with an inspection or inquiry under this Part.

Penalty.

(2) Every person who contravenes any of the provisions of subsection 1 shall incur a penalty not exceeding \$50. 1914, c. 25, s. 82.

Recovery
and appli-
cation of
penalties.

Rev. Stat.
c. 121.

94. The penalties imposed by or under the authority of this Part shall be recoverable under *The Summary Convictions Act*, and when collected shall be paid over to the Board and shall form part of the accident fund. 1914, c. 25, s. 83.

ASSESSMENTS.

Assessments,
levying of.

95.—(1) The Board shall in every year assess and levy upon the employers in each of the classes such percentage of pay roll or such other rate or such specific sum as, allowing for any surplus or deficit in the class, it shall deem sufficient to pay the compensation during the current year in respect of injuries to workmen in the industries within the class, and to provide and pay the expenses of the Board in the administration of this Part for that year or so much thereof as may

not be otherwise provided for, and also to maintain a reserve fund to pay the compensation payable in future years in respect of claims in that class for accidents happening in that year, of such an amount as the Board may deem necessary to prevent the employers in future years from being unduly or unfairly burdened with payments which are to be made in those years in respect of accidents which have previously happened.

(2) Such assessments may, if the Board sees fit, be levied provisionally upon the estimate of pay roll given by the employer or upon an estimate fixed by the Board and after the actual pay roll has been ascertained, adjusted to the correct amount, and the payment of assessments may, if the Board deems fit, be divided into instalments. 1915, c. 24, s. 23.

Provisional
levy.

96.—(1) Where the assessment is based on the pay roll of the employer and there is included in it the wages or salary of a workman who has been paid more than at the rate of \$2,000 per annum the excess shall be deducted from the amount of the pay roll and the assessment shall be based on the amount of it as so reduced.

Deduction
from pay
roll of pro-
portion of
wages.

(2) It shall not be necessary that the assessment upon the employers in a class or sub-class shall be uniform, but they may be fixed or graded in relation to the hazard of each or of any of the industries included in the class or sub-class. 1914, c. 25, s. 85 (2, 3).

Assessments
need not
be uniform.

(3) A system of merit rating may, if deemed proper, be adopted. 1917, c. 34, s. 14.

Merit rating
in making
annual
assessment.

97.—(1) The Board shall determine and fix the percentage, rate or sum for which each employer is assessed under the provisions of either of the next preceding two sections, or the provisional amount thereof, and such employer shall pay to the Board the amount or provisional amount of his assessment within one month or such other time as the Board may fix after notice of the assessment and of such amount has been given to him, or where payment is to be made by instalments he shall pay the first instalment within such time and the remaining instalment or instalments at the time or times specified in such notice. 1915, c. 24, s. 24 (a); 1917, c. 34, s. 15.

Rate of
assessment
to be fixed
by the
Board.

(2) The notice may be sent by post to the employer and shall be deemed to have been given to him on the day on which the notice was posted. 1914, c. 25, s. 86 (2); 1915, c. 24, s. 24 (b).

How notice
may be
served.

(3) Wherever at any time it appears that a statement or estimate of pay roll upon which an assessment or provisional amount of assessment is based is too low the employer shall upon demand pay to the Board such sum, to be fixed by the

Revision
of assess-
ments.

Board, as shall be sufficient to bring the payment of assessment up to the proper amount; and payment of any such sum may be enforced in the same manner as the payment of any assessment may be enforced. 1915, c. 24, s. 24 (c).

Insufficient assessment to be made up by supplementary assessments.

98. If the amount realized from any assessment is insufficient for the purpose for which the assessment was made, the Board may make supplementary assessments to make up the deficiency and section 97 shall apply to such assessments but the Board may defer assessing for such deficiency until the next annual assessment is made and then include it in such assessment. 1914, c. 25, s. 87; 1915, c. 24, s. 25.

All classes may be assessed for deficiency in any of them.

99.—(1) Where any deficiency in the amount realized from any assessment in any class is caused by the failure of some of the employers in that class to pay their share of the assessment or by any disaster or other circumstance which in the opinion of the Board would unfairly burden the employers in that class, the deficiency or loss shall be made up by supplementary assessments upon the employers in all the classes and the provisions of section 97 shall apply to such assessments but the Board may defer assessing for such deficiency or loss until the next annual assessment is made and then include it in such assessment. 1914, c. 25, s. 88; 1915, c. 24, s. 26 (a), (b).

Special fund.

(2) The Board where it deems proper may add to the assessment for any class or classes or for all the classes in Schedule 1 a percentage or sum for the purpose of raising a special fund to be laid aside and used to meet the loss arising from any disaster or other circumstance which in the opinion of the Board would unfairly burden the employers in any class. 1915, c. 24, s. 26 (c).

Where deficiency made good by employer, mode of application of payment.

100.—(1) If and so far as any deficiency mentioned in the next preceding two sections is afterwards made good wholly or partly by the defaulting employer the amount which shall have been made good shall be apportioned between the other employers in the proportions in which the deficiency was made up by them by the payment of supplementary assessments upon them and shall be credited to them in making the next assessment.

Employer not assessed liable to pay amount for which he should have been assessed.

(2) If for any reason an employer liable to assessment is not assessed in any year he shall nevertheless be liable to pay to the Board the amount for which he should have been assessed, and payment of that amount may be enforced in the same manner as the payment of an assessment may be enforced.

Amount collected to be taken into account in making subsequent assessment.

(3) Any sum collected from an employer under subsection 2 shall be taken into account by the Board in making an assessment in a subsequent year on the employers in the class or sub-class to which such employer belonged. 1914, c. 25, s. 89.

101. Notwithstanding that the deficiency arising from a default in the payment of the whole or part of any assessment has been made up by a special assessment a defaulting employer shall continue liable to pay to the Board the amount of every assessment made upon him or so much of it as remains unpaid. 1914, c. 25, s. 90.

Employer
liable to
pay unpaid
sums.

102. Whenever the Lieutenant-Governor in Council is of opinion that the condition of the accident fund is such that with the reserves, exclusive of the special reserve, it is not sufficient to meet all the payments to be made in respect of compensation as they become payable and so as not unduly or unfairly to burden the employers in any class in future years with payments which are to be made in those years in respect of accidents which have happened in previous years, he may require the Board to make a supplementary assessment of such sum as in his opinion is necessary to be added to the fund, and when such a requirement is made the Board shall forthwith make such supplementary assessment and it shall be made in like manner as is hereinbefore provided as to other special assessments and all the provisions of this Part as to special assessments shall apply to it. 1914, c. 25, s. 91.

Lieutenant-
Governor
in Council
may require
supplementary
assessments
to be made.

103. In order to maintain the accident fund as provided by section 80 the Board may from time to time and as often as may be deemed necessary include in any sum to be assessed upon the employers and may collect from them such sums as may be deemed necessary for that purpose and the sums so collected shall form a reserve fund and shall be invested in securities in which a trustee may by law invest trust moneys. 1914, c. 25, s. 92.

Formation
of reserves.

104. If an assessment or a special assessment is not paid at the time when it becomes payable, the defaulting employer shall be liable to pay and shall pay as a penalty for his default such a percentage upon the amount unpaid as may be prescribed by the regulations or may be determined by the Board. 1914, c. 25, s. 93.

Penalty for
non-payment
of assessment.

105.—(1) Any employer who refuses or neglects to make or transmit any pay roll, return or other statement required to be furnished by him under the provisions of section 88 or 108, or who refuses or neglects to pay any assessment or special or supplementary assessment or the provisional amount of any assessment, or any instalment or part thereof, shall, in addition to any penalty or other liability to which he may be subject, pay to the Board the full amount or capitalized value, as determined by the Board, of the compensation payable in respect of any accident to a workman in his employ which happens during the period of such default, and the payment of such amount may be enforced in the same manner as the payment of an assessment may be enforced.

Failure to
make return
or pay
assessment.

Relieving
clause.

(2) The Board, if satisfied that such default was excusable, may in any case relieve such employer in whole or in part from liability under this section. 1915, c. 24, s. 27.

Collection
of unpaid
assessments.

106. Where default is made in the payment of any assessment, or special assessment, or any part of it the Board may issue its certificate stating that the assessment was made, the amount remaining unpaid on account of it and the person by whom it was payable and such certificate or a copy of it certified by the secretary to be a true copy may be filed with the clerk of any county or district court or where the amount remaining unpaid does not exceed \$200, with the clerk of any division court, and when so filed shall become an order of that court and may be enforced as a judgment of the court against such person for the amount mentioned in the certificate. 1914, c. 25, s. 94; 1927, c. 46, s. 4.

Board may
collect assess-
ment through
municipal
collectors.

107.—(1) If an assessment or a special assessment or any part of it remains unpaid for thirty days after it has become payable, the Board, in lieu of or in addition to proceeding as provided by the next preceding section, may issue its certificate stating the name and residence of the defaulting employer, the amount unpaid on the assessment, the establishment in respect of which it is payable, and upon the delivery of the certificate to the clerk of the municipality in which the establishment is situate he shall cause the amount so remaining unpaid as stated in the certificate to be entered upon the collector's roll as if it were taxes due by the defaulting employer in respect of such establishment, and it shall be collected in like manner as taxes are levied and collected and the amount when collected shall be paid over by the collector to the Board.

Collector
entitled to
percentage.

(2) The collector shall be entitled to add five per centum thereof to the amount to be collected and to retain such percentage for his services in making the collection. 1914, c. 25, s. 95.

Case of indus-
tries estab-
lished after
assessment
made.

108.—(1) Where an industry coming within any of the classes for the time being included in Schedule 1 is established or commenced after an assessment has been made it shall be the duty of the employer forthwith to notify the Board of the fact and to furnish to the Board an estimate of the probable amount of his pay roll for the remainder of the year, verified by a statutory declaration, and to pay to the Board a sum equal to that for which he would have been liable if his industry had been established or commenced before such assessment was made or so much thereof as the Board may deem reasonable.

Powers of
Board.

(2) The Board shall have the like powers and be entitled to the like remedies for enforcing payment of the sum payable by the employer under subsection 1 as it possesses or is entitled to in respect of assessments. 1914, c. 25, s. 96 (1, 2).

(3) For default in complying with the provisions of sub-Penalty. section 1 the employer shall incur the like penalty and liability as are provided with respect to defaults by section 88. 1914, c. 25, s. 96 (3); 1919, c. 34, s. 10.

109.—(1) Where an employer engages in any of the in-Case of indus-
dustries for the time being included in Schedule 1 and has try temporar-
not been assessed in respect of it, the Board, if it is of opinion ily carried on.
that the industry is to be carried on only temporarily, may require the employer to pay or to give security for the payment to the Board of a sum sufficient to pay the assessment for which the employer would have been liable if the industry had been in existence when the next preceding assessment was made.

(2) The Board shall have the like powers and be entitled Powers of
to the like remedies for enforcing payment of any such sum Board.
as it possesses or is entitled to in respect of assessments.

(3) An employer who makes default in complying with Penalty.
the provisions of subsection 1 shall incur a penalty not exceeding \$200 and an additional penalty not exceeding \$20 per day for every day on which the default continues. 1914, c. 25, s. 97.

110. In the case of a work or service performed by an employer in any of the industries for the time being included in Schedule 1 for which the employer would be entitled to a lien under *The Mechanics' Lien Act* it shall be the duty of the owner as defined by that Act to see that any sum which the employer is liable to contribute to the accident fund is paid and if any such owner fails to do so he shall be personally liable to pay it to the Board, and the Board shall have the like powers and be entitled to the like remedies for enforcing payment as it possesses or is entitled to in respect of an assessment. 1914, c. 25, s. 98. Liability of
owner under
Rev. Stat.
c. 173, for
contribution
of employer to
accident fund.

111.—(1) There shall be included among the debts which, under *The Assignments and Preferences Act*, *The Trustee Act*, and *The Companies Act*, are, in the distribution of the property, in the case of an assignment or death or in the distribution of the assets of a company being wound up, under the said Acts respectively, to be paid in priority to all other debts, the amount of any assessment or compensation the liability whereof accrued before the date of the assignment or death or before the date of the commencement of the winding up, and the said Acts shall have effect accordingly. Priority of
assessments
and compensa-
tion in distribu-
tion of
assets.
Rev. Stat.
cc. 162,
150, 218.

(2) When the compensation is a periodical payment the liability in respect thereof shall, for the purposes of this section, be taken to be the amount of the lump sum, to be determined by the Board, for which the periodical payments may be commuted. Periodical
payments of
compensation.

Limit of
priority.

(3) Priority in respect of any individual claim for compensation shall not exceed \$500. 1915, c. 24, s. 28.

RETURNS OF ACCIDENTS.

Employers
to give notice
of accidents

112.—(1) Every employer shall within three days after the happening of an accident to a workman in his employment by which the workman is disabled from earning full wages or which necessitates medical aid notify the Board in writing of the,—

- (a) happening of the accident and nature of it;
- (b) time of its occurrence;
- (c) name and address of the workman;
- (d) place where the accident happened;
- (e) name and address of the physician or surgeon, if any, by whom the workman was or is attended for the injury;

and shall in any case furnish such further details and particulars respecting any accident or claim to compensation as the Board may require. 1914, c. 25, s. 99 (1); 1915, c. 24, s. 29; 1919, c. 34, s. 11.

Penalty.

(2) For every contravention of subsection 1 the employer shall incur a penalty not exceeding \$50. 1914, c. 25, s. 99 (2).

Default in
reporting
accident or
claim.

(3) Every employer who makes default in reporting or furnishing particulars of any accident or claim shall in addition to any other penalty or liability pay to the Board, if so ordered by the Board, the amount of compensation awarded in respect of such accident or claim in accordance with the evidence or information otherwise obtained by the Board. 1917, c. 34, s. 16.

INDUSTRIAL DISEASES.

Certain
industrial
diseases to
be deemed
accidents.

113.—(1) Where a workman suffers from an industrial disease and is thereby disabled from earning full wages at the work at which he was employed or his death is caused by an industrial disease and the disease is due to the nature of any employment in which he was engaged at any time within twelve months previous to the date of his disablement, whether under one or more employments the workman or his dependants shall be entitled to compensation as if the disease were a personal injury by accident and the disablement were the happening of the accident, subject to the modifications hereinafter mentioned, unless at the time of entering into the employment he had wilfully and falsely represented himself in writing as not having previously suffered from the disease.

(2) Where the compensation is payable by an employer individually it shall be payable by the employer who last employed the workman during such twelve months in the employment to the nature of which the disease was due. By whom compensation payable.

(3) The workman or his dependants if so required shall furnish the employer mentioned in the next preceding subsection with such information as to the names and addresses of all the other employers by whom he was employed in the employment to the nature of which the disease was due during such twelve months as such workman or his dependants may possess, and if such information is not furnished or is not sufficient to enable that employer to take the proceedings mentioned in subsection 4 that employer upon proving that the disease was not contracted while the workman was in his employment shall not be liable to pay compensation. Names of former employers to be furnished by claimants.

(4) If that employer alleges that the disease was in fact contracted while the workman was in the employment of some other employer he may bring such employer before the Board and if the allegation is proved that other employer shall be the employer by whom the compensation shall be paid. Last employer may bring in former employers.

(5) If the disease is of such a nature as to be contracted by a gradual process any other employers who during such twelve months employed the workman in the employment to the nature of which the disease was due shall be liable to make to the employer by whom the compensation is payable such contributions as the Board may determine to be just. Where disease result of gradual process, former employers to contribute.

(6) The amount of the compensation shall be fixed with reference to the earnings of the workman under the employer by whom the compensation is payable and the notice provided for by section 19 shall be given to the employer who last employed the workman during such twelve months in the employment to the nature of which the disease was due and the notice may be given notwithstanding that the workman has voluntarily left the employment. 1914, c. 25, s. 100 (1-6). How compensation to be fixed.

(7) Where the compensation is payable out of the accident fund the Board shall make such investigation as it deems necessary to ascertain the class or classes against which the compensation should be charged and shall charge or apportion the compensation accordingly. 1917, c. 34, s. 17 (1). Charging compensation to particular classes.

(8) If the workman at or immediately before the date of the disablement was employed in any process mentioned in the second column of Schedule 3 and the disease contracted is the disease in the first column of the Schedule set opposite to the description of the process the disease shall be deemed to have been due to the nature of that employment unless the contrary is proved, but, except where the Board is satisfied that the disease is not due to any other cause than his employment within Ontario, no compensation shall be payable Presumptions as to disease being due to nature of employment.

under this section unless the workman has been a resident of Ontario for the three years next preceding his first disablement. 1914, c. 25, s. 100 (7); 1917, c. 34, s. 17 (2).

"Silicosis."

(9).—(a) "Silicosis" shall mean silicosis of the lungs (a fibroid condition of the lungs caused by the inhalation of silica dust).

When person to be deemed affected by silicosis.

(b) A person shall for the purposes of this Act be deemed to have or to have had silicosis,—

- (i) In the ante-primary stage, when it is found by the Board that the earliest detectable specific physical signs of silicosis are or have been present, whether or not capacity for work is or has been impaired by such silicosis;
- (ii) In the primary stage, when it is found by the Board that definite and specific physical signs of silicosis are or have been present, and that capacity for work is or has been impaired by that disease, though not seriously and permanently;
- (iii) In the secondary stage, when it is found by the Board that definite and specific physical signs of silicosis are or have been present, and that capacity for work is or has been seriously and permanently impaired by that disease or when it is found by the Board that tuberculosis with silicosis is or has been present.

Condition upon which compensation granted.

(10) Nothing in this Act shall entitle a workman or his dependants to compensation, medical aid, or payment of burial expenses for disability or death from silicosis unless the workman has been actually exposed to silica dust in his employment in Ontario for periods amounting in all to at least five years preceding his disablement. 1926, c. 42, s. 2.

Right to compensation where disease is result of an injury not to be affected.

(11) Nothing in this section shall affect the right of a workman to compensation in respect of a disease to which this section does not apply if the disease is the result of an injury in respect of which he is entitled to compensation under this Part. 1914, c. 25, s. 100 (8).

FORMATION OF ASSOCIATIONS AND COMMITTEES.

Associations of employers may be formed.

114.—(1) The employers in any of the classes for the time being included in Schedule 1 may form themselves into an association for accident prevention and may make rules for that purpose.

Rules of associations if approved to be binding on the members of the class.

(2) If the Board is of opinion that an association so formed sufficiently represents the employers in the industries included in the class, the Board may approve such rules, and when approved by the Board and by the Lieutenant-

Governor in Council they shall be binding on all the employers in industries included in the class.

(3) Where an association under the authority of its rules appoints an inspector or an expert for the purpose of accident prevention, the Board may pay the whole or any part of the salary or remuneration of such inspector or expert out of the accident fund or out of that part of it which is at the credit of any one or more of the classes as the Board may deem just. 1914, c. 25, s. 101.

(4) The Board may in any case where it deems proper make a grant toward the expenses of any such association.

Payment
of salary of
inspector or
expert out
of accident
fund.

Grant to
expenses of
employers'
association.

(5) Any moneys paid by the Board under this section shall be charged against the class represented by such association and levied as part of the assessment against such class.

Grant to
safety
associations.

(6) The word "class" in this section shall include sub-class or such part of a class or such number or classes or parts of classes in Schedule 1 as may be approved by the Board. 1915, c. 24, s. 30.

"Class"
defined.

115.—(1) The employers in any of the classes for the time being included in Schedule 1 may appoint a committee of themselves, consisting of not more than five employers, to watch over their interests in matters to which this Part relates.

Committee of
employers.

(2) Where a claim is for compensation for an injury for which the employers in any such class would be liable, if the Board is of the opinion that the committee sufficiently represents such employers, and the committee certifies to the Board that it is satisfied that the claim should be allowed, the Board may act on the certificate and may also act upon the certificate of the committee as to the proper sum to be awarded for compensation if the workman or dependant is satisfied with the sum named in the certificate.

Board may
act on certi-
ficate of com-
mittee as to
payment of
compensation.

(3) The committee may be the medium of communication on the part of the class with the Board. 1914, c. 25, s. 102.

Medium of
communica-
tion.

CONTRIBUTION BY EMPLOYERS IN SCHEDULE 2.

116. Employers in industries for the time being included in Schedule 2 shall pay to the Board such proportion of the expenses of the Board in the administration of this Part as the Board may deem just and determine, and the sum payable by them shall be apportioned between such employers and assessed and levied in like manner as in the case of assessments for contributions to the accident fund, and the provisions of this Part as to making such assessments shall apply *mutatis mutandis* to assessments made under the authority of this section. 1914, c. 25, s. 103.

Contribution
by employers
individually
liable to
expenses of
administra-
tion.

Application
of Part I.

117. This Part shall apply only to the industries mentioned in Schedules 1 and 2 and to such industries as shall be added to them under the authority of this Part and to employments therein. 1914, c. 25, s. 104.

PART II.

Application
of sections
119 to 121.

Application
of Part II.
to outworkers,
clerks, and
casual em-
ployees.

118. Subject to section 122 sections 119 to 121 shall apply only to the industries to which Part I does not apply and to the workmen employed in such industries, but outworkers and persons whose employment is of a casual nature and who are employed otherwise than for the purposes of the employer's trade or business, who are employed in industries under the operation of Part I but who are excluded from the benefit of the provisions of Part I, shall not by this section be excluded from the benefit of the provisions of sections 119 to 121. 1914, c. 25, s. 105; 1915, c. 24, s. 31; 1919, c. 34, s. 12.

Liability of
employer for
defective
ways, works,
etc., and for
negligence of
his servants.

119.—(1) Where personal injury is caused to a workman by reason of any defect in the condition or arrangement of the ways, works, machinery, plant, buildings or premises connected with, intended for or used in the business of his employer or by reason of the negligence of his employer or of any person in the service of his employer acting within the scope of his employment the workman or if the injury results in death the legal personal representatives of the workman and any person entitled in case of death shall have an action against the employer, and if the action is brought by the workman he shall be entitled to recover from the employer the damages sustained by the workman by or in consequence of the injury, and if the action is brought by the legal personal representatives of the workman or by or on behalf of persons entitled to damages under *The Fatal Accidents Act* they shall be entitled to recover such damages as they are entitled to under that Act.

Rev. Stat.
c. 183.

Liability of
person supply-
ing defective
ways, works,
plant, etc.

(2) Where the execution of any work is being carried into effect under any contract, and the person for whom the work is done owns or supplies any ways, works, machinery, plant, buildings or premises, and by reason of any defect in the condition or arrangement of them personal injury is caused to a workman employed by the contractor or by any sub-contractor, and the defect arose from the negligence of the person for whom the work or any part of it is done or of some person in his service and acting within the scope of his employment, the person for whom the work or that part of the work is done shall be liable to the action as if the workman had been employed by him, and for that purpose shall be deemed to be the employer of the workman within the meaning of this Act, but any such contractor or sub-contractor shall be

liable to the action as if this subsection had not been enacted but not so that double damages shall be recoverable for the same injury.

(3) Nothing in subsection 2 shall affect any right or liability of the person for whom the work is done and the contractor or sub-contractor as between themselves.

Liability of contractor and sub-contractor.

(4) A workman shall not by reason only of his continuing in the employment of the employer with knowledge of the defect or negligence which caused his injury be deemed to have voluntarily incurred the risk of the injury. 1914, c. 25, s. 106.

Effect of continuance in employment after knowledge.

120. A workman shall hereafter be deemed not to have undertaken the risks due to the negligence of his fellow workmen and contributory negligence on the part of a workman shall not hereafter be a bar to recovery by him or by any person entitled to damages under *The Fatal Accidents Act* in an action for the recovery of damages for an injury sustained by or causing the death of the workman while in the service of his employer for which the employer would otherwise have been liable. 1914, c. 25, s. 107.

Certain common law rules abrogated.

Rev. Stat. c. 183.

121. Contributory negligence on the part of the workman shall nevertheless be taken into account in assessing the damages in any such action. 1914, c. 25, s. 108.

Contributory negligence to be considered in assessing damages.

122. This Act shall not apply to the industry of farming or to domestic or menial servants or their employers. 1914, c. 25, s. 109; 1919, c. 34, s. 13.

Farm labourers and domestic servants excluded.

SCHEDULE 1.

INDUSTRIES THE EMPLOYERS IN WHICH ARE LIABLE TO CONTRIBUTE TO THE ACCIDENT FUND.

Class 1.—Lumbering; logging, river-driving, rafting, booming; rossing, bark peeling; sawmills, shingle-mills, lath-mills; manufacture of veneer, excelsior, staves, spokes, or headings; lumber yards (including the delivery of lumber) carried on in connection with sawmills; the creosoting of timbers.

Class 2.—Pulp and paper mills.

Class 3.—Manufacture of furniture, fixtures, organs, pianos, piano actions, canoes, small boats, coffins, wicker and rattan ware, mattresses, bed-springs, artificial limbs, cork articles, cork carpets or linoleum; upholstering, picture framing.

Class 4.—Planing mills, sash and door factories, manufacture of wooden and corrugated paper boxes, cheese boxes, mouldings, window and door screens, window shades, brooms or brushes, carpet

sweepers, wooden toys, articles and wares or baskets, matches or shade rollers; lumber yards (including the delivery of lumber) carried on in connection with planing mills or sash and door factories; cooperage, not including the making of staves or headings; carpenter, joiner, or cabinet work in shop.

Class 5.—Mining; reduction of ores and smelting; preparation of metals or minerals; boring and drilling, including sinking of artesian wells (except when done by an employer coming under Class 12); manufacture of calcium carbide, carborundum or alundum, abrasives or abrasive articles other than stone; manufacture of fireworks, gunpowder, ammunition, nitro-glycerine, dynamite, gun-cotton or other high explosives, torpedoes, fuses or cartridges.

Class 6.—Sand, shale, clay or gravel pits; marble works, stone cutting or dressing; manufacture of brick, tile, terra-cotta, fire-proofing, sewer pipe, roof tile, plaster blocks, plaster board, slate or artificial stone; manufacture of brick, stone or artificial stone paving blocks, or cement or concrete blocks; quarries, stone crushing, lime kilns; manufacture of cement, glass, glass products, glassware, porcelain or pottery.

Class 7.—Rolling mills; steel works; manufacture of heavy forgings, including ship anchors.

Class 8.—Foundries; gas or electric welding; manufacture of stoves, furnaces, cast hot water boilers, radiators, or metal sanitary ware, water fixtures or bedsteads.

Class 9.—Fabrication of structural steel, iron or metal; ship building or ship repairing; manufacture of boilers, engines, locomotives; riveted pipes, tubing or tanks; safes, heavy machinery, cranes; or metal siding, ceiling; roofing, shingles, window frames or the like.

Class 10.—Machine shops, metal stamping works, or blacksmith shops; manufacture of light forgings, carriage mountings, wires, cables, bolts, nuts, nails, screws, tools, cutlery, hardware; tin, sheet metal or sheet metal enamelled wares or articles not otherwise specified; metal wares, instruments, utensils and articles; wire goods, screens, cold drawn shafting, cold drawn tubing, fire-arms, ammunition shells (without explosives), windmills, gas or electric light fixtures, light machinery, scales, cash registers, typewriters, adding machines, dry batteries, cameras, sporting goods, metal toys; buttons of metal, ivory, pearl or horn; ivory articles, rubber stamps, pads or stencils; manufacture of gold or silverware, plated ware, watches, watch-cases, clocks, jewellery or musical instruments.

Class 11.—Manufacture of agricultural implements, threshing machines, wagons, carriages, sleighs, vehicles, automobiles, motor trucks, motor-cycles, bicycles, tricycles, toy wagons or sleighs, baby carriages, or aeroplanes; car shops.

Class 12.—Manufacture of paint, colour, varnish, oil, japans, turpentine, printing ink, printers' rollers; manufacture of salt; manufacture of chemicals, corrosive acids, or salts, ammonia, gasoline, petroleum, petroleum products, celluloid, gas, charcoal, artificial ice, including the handling and delivery thereof; wood alcohol, celluloid articles; the manufacture, transmission and distribution of natural or artificial gas and operations connected therewith; the cutting, storing, handling and delivery of natural ice; manufacture of non-hazardous chemicals, drugs, medicines, dyes, extracts, pharmaceutical or toilet preparations, soaps, candles, perfumes, non-corrosive acids or chemical preparations; shoe-blackening or polish, yeast, baking powder or mucilage; tar, or tarred, pitched or asphalted paper.

Class 13.—Milling; manufacture of cereals or cattle foods; warehousing or handling of grain or operation of grain elevators, threshing machines, clover mills, or ensilage cutters.

Class 14.—Manufacture or preparation of meats or meat products or glue; packing houses, abattoirs; manufacture of fertilizers not incidental to any other industry.

Class 15.—Distilleries, breweries; manufacture of spirituous or malt liquors, malt, alcohol, wine, vinegar, cider, mineral water, soda waters, or methylated spirits; sugar refineries; manufacture of dairy products, butter, cheese, condensed milk or cream, biscuits, confectionery, chewing gum, spices, condiments, or any kind of starch; bakeries; canning or preparation of fruit, vegetables, fish or food stuffs; pickle factories; manufacture of tobacco, cigars, cigarettes or tobacco products.

Class 16.—Tanneries; manufacture of leather goods and products, belting, whips, saddlery, harness, trunks, valises, trusses, imitation leather, boots, shoes, gloves, rubber goods, rubber shoes, tubing, tires, or hose.

Class 17.—Flax mills; manufacture of textiles or fabrics, spinning, weaving and knitting manufactories; manufacture of yarn, thread, hosiery, cloth, blankets, carpets, canvas, bags, shoddy, felt, felt hats, cordage, ropes, fibre, asbestos goods, hair cloth and other hair goods; work in manilla or hemp.

Class 18.—Manufacture of men's or women's clothing, whitewear, shirts, collars, corsets, hats other than felt, caps, furs, robes, feathers or artificial flowers, quilts, clothing pads, tents, awnings, gloves, mittens, neckties, or other articles not otherwise specified made from fabrics; the erection of awnings; covering of umbrellas; power laundries; dyeing, cleaning or bleaching.

Class 19.—Printing, photo-engraving, engraving, lithographing, book-binding, embossing; manufacture of stationery, paper, cardboard boxes, bags, wall-paper, or papier-mache.

Class 20.—Heavy teaming or cartage; safe-moving or moving of boilers, heavy machinery, building stone and the like; warehousing, storage; teaming and cartage, including the hauling for hire by means of any vehicle, howsoever drawn or propelled, of any commodity or material; scavenging, street cleaning or removal of snow or ice; coal, wood, lumber yard, and builders' supply businesses.

Class 21.—Road or street making or repairing; bridge or culvert construction not otherwise classified; manufacture of asphalt material or paving material not otherwise classified; concrete or cement work not otherwise classified; sewer construction, tunneling, shaft sinking, well digging; construction or operation of a waterworks system; excavation work for foundations other than for or in connection with buildings; trenching, less than six feet deep, for gas pipes, water pipes or wire conduits; excavation work not otherwise classified where the depth is more than six feet and the width is less than half the depth.

Class 22.—Construction, installation or operation of electric power lines or appliances, and power transmission lines; construction or operation of an electric light system; construction and operation of power plants and electric light works, not included in Schedule 2; construction or operation of telegraph or telephone lines, construction or operation of telephone lines and works for the purposes of the business of a telephone company or used or to be used in connection with its business when constructed or operated by the company, except where such telephone lines or works are within the legislative authority of the Parliament of Canada.

Class 23.—Steel building and bridge construction; installation of elevators, fire-escapes, boilers, engines or heavy machinery; the erection of windmills; construction or operation of railways or canals; construction or operation of drydocks; construction of piers,

wharves, breakwaters or other harbour improvements; stevedoring; operation of and work upon wharves; dredging, subaqueous construction or pile driving; fishing; loading or unloading of cars; all industries, trade businesses, and occupations mentioned in section 82 of the Act, not otherwise classified and not included in Schedule 2.

Class 24.—Bricklaying, mason work, stone setting; plastering; concrete or cement work in or connected with buildings; excavator work for or connected with buildings; structural carpentry; lathing; installation of pipe organs; house wrecking or house moving; painting, decorating or renovating; glazing or installation of plate glass; the business of window-cleaning; sheet metal work; roofing; the erection of lightning rods; electric wiring of buildings or installation of lighting fixtures; plumbing, heating or sanitary engineering; gas or steamfitting; operation of theatres licensed under *The Theatres and Cinematographs Act* and operation of places for exhibitions by moving picture machines licensed under *The Theatres and Cinematographs Act*.

1914, c. 25, sched. 1; 1915, c. 24, s. 33 (2), *part*, and the Regulations.

SCHEDULE 2.

INDUSTRIES THE EMPLOYERS IN WHICH ARE INDIVIDUALLY LIABLE TO
PAY THE COMPENSATION.

1. The trade or business, as defined by subsection 2 of section 1, of a municipal corporation, a public utilities commission, any other commission having the management and conduct of any work or service owned by or operated for a municipal corporation, a board of trustees of a police village and a school board.

2. The construction or operation of railways operated by steam, electric or other motive power, street railways and incline railways, but not their construction when constructed by any person other than the company which owns or operates the railway.

3. The construction or operation of car shops, machine shops, steam and power plants and other works for the purposes of any such railway or used or to be used in connection with it when constructed or operated by the company which owns or operates the railway.

4. The construction or operation of telephone lines and works within the legislative authority of the Parliament of Canada, for the purposes of the business of a telephone company or used or to be used in connection with its business when constructed or operated by the company.

5. The construction or operation of telegraph lines and works for the purposes of the business of a telegraph company or used or to be used in connection with its business when constructed or operated by the company.

6. The construction or operation of steam vessels and works for the purposes of the business of a navigation company or used or to be used in connection with its business when constructed or operated by the company, and all other navigation, towing, operation of vessels, and marine wrecking.

7. The operation of the business of an express company which operates on or in conjunction with a railway, or of sleeping, parlor or dining cars, whether operated by the railway company, or by an express, sleeping, parlor or dining car company.

8. The construction or operation of a bridge connecting the Province with an adjacent province or state, but not its construction when constructed by any person or company other than the person or company owning or operating the bridge.

1914, c. 25, sched. 2; 1915, c. 24, s. 33 (1) (*a, b*); 1916, c. 31, s. 9, and the Regulations.

SCHEDULE 3.

Description of Disease.	Description of Process.
Anthrax.	Handling of wool, hair, bristles, hides, and skins.
Lead poisoning or its sequelæ.	Any process involving the use of lead or its preparations or compounds.
Mercury poisoning or its sequelæ.	Any process involving the use of mercury or its preparations or compounds.
Phosphorus poisoning or its sequelæ.	Any process involving the use of phosphorus or its preparations or compounds.
Arsenic poisoning or its sequelæ.	Any process involving the use of arsenic or its preparations or compounds.
Ankylostomiasis.	Mining.
Miners' phthisis.	Mining.
Benzol poisoning.	Any process involving the use of Benzol. (Added by Regulation 94, 13th January, 1925.)
Stone workers' or grinders' phthisis.	Quarrying, cutting, crushing, grinding, or polishing of stone, or grinding or polishing of metal. (Added by Regulation 94, 13th January, 1925.)
Silicosis.	Mining.
Pneumoconiosis.	Quarrying, cutting, crushing, grinding, or polishing of stone, or grinding or polishing of metal. (Added by amendment to Regulation 94, 1st June, 1926.)
Compressed air illness or caisson disease.	Any process carried on in compressed air. (Added by Regulation 96, effective 1st January, 1926.)

1914, c. 25, Sched. 3; 1917, c. 34, s. 17 (3); 1926, c. 42, s. 3, and the Regulations.

CHAPTER 180.

The Workmen's Compensation Insurance Act.

Interpreta-
tion
"workman."
Rev. Stat.
c. 183.

1. In this Act "workman" shall include the dependants of a workman entitled to recover damages under *The Fatal Accidents Act*. 1915, c. 25, s. 2.

Claim of
workman on
insurance
moneys pay-
able to
employer.

2. Where an employer is insured against his liability for damages to a workman under any Act of this Legislature the insurance shall be deemed to be for and shall enure to the benefit of the workman, and if a workman has suffered injury in respect of which he is entitled to recover damages from his employer, the insurer shall not, without the consent of the workman, pay to the employer the amount for which the insurer is liable to him in respect of such injury, unless or until the claim of the workman has been satisfied, and the workman if and when his right to recover the damages has been determined as against the employer shall be entitled to demand and recover from the insurer the amount of the damages and costs to the extent to which, but no further than, the employer is entitled to recover the same from the insurer. 1915, c. 25, s. 3.

Act not to
apply to
workmen
entitled
under
Rev. Stat.
c. 179.

3. This Act shall not apply to a workman who is entitled to compensation under Part I. of *The Workmen's Compensation Act*. 1915, c. 25, s. 4.

SECTION XI.

LAWS AFFECTING SPECIAL CLASSES OF PERSONS.

1. *HUSBAND AND WIFE.*

CHAPTER 181.

The Marriage Act.

WHO MAY SOLEMNIZE MARRIAGES.

1.—(1) The following persons, when duly registered as hereinafter provided, being resident in Canada, may solemnize marriage between persons not under a legal disqualification to contract such marriage:

- (a) The ministers and clergymen of every church and religious denomination duly ordained or appointed according to the rites and ceremonies of the church or denomination to which they respectively belong;
Who may solemnize marriage in Ontario. Ministers and clergymen.
- (b) Any elder, evangelist or missionary for the time being of any church or congregation of the religious people commonly called or known congregationally as "Congregations of God," "Congregations of Christ," or "Churches of Christ" and individually as "Disciples of Christ," who, from time to time, is chosen by any such congregation for the solemnization of marriages;
Elders, etc., Congregations of God and Disciples of Christ.
- (c) Any duly appointed commissioner or staff officer of the religious society called the Salvation Army chosen or commissioned by the society to solemnize marriages;
Officers of Salvation Army.
- (d) Any elder for the time being of the church or congregation of religious people commonly called or known congregationally as "Farrington Independent Church," who, from time to time, is chosen by such church or congregation for the solemnization of marriages;
Elders of Farrington Independent Church.

Minister of
the Breth-
ren.

(e) Any recognized evangelist, teacher or elder for the time being of any congregation of Christians commonly called or known as "Brethren" who may be appointed by any such congregation for the solemnization of marriages.

Solemniza-
tion of
marriage
by non-
resident
locum
tenens.

(2) Any person who is duly qualified as above provided except as to residence shall if temporarily resident in Canada for the purpose of officiating during the absence or at the request of or for the purpose of assisting the clergyman or minister of any church or religious denomination within Ontario, be deemed for the purpose of this section resident in Canada.

Solemniza-
tion of
marriage by
non-resident
British
subject.

(3) Notwithstanding anything contained in subsections 1 and 2 of this section, the Provincial Secretary may authorize from time to time any person mentioned in clauses *a* to *e* of subsection 1 of this section who is a British subject and resident in the British Empire, notwithstanding that such person is not at the time resident in Canada, to solemnize the marriage of the parties mentioned in such authorization. 1927, c. 47, s. 2.

Authoriza-
tion to
solemnize
marriage.

2.—(1) The Provincial Secretary shall from time to time, on application made to him according to forms prescribed by the Lieutenant-Governor in Council, or to the like effect, which application may be made by the applicant or, on his behalf, by the ecclesiastical authority or authorities of the church, religious denomination or congregation to which he belongs, register such person as authorized to solemnize marriage and may issue one or more certificates of such registration to any person so registered or otherwise, and may include therein the name of any number of persons so registered.

Record to
be kept by
Provincial
Secretary.

(2) The Provincial Secretary shall keep in his office a register or record of names of all persons registered as authorized to solemnize marriage, and the time when each such person was first so authorized, and, in case such registration has been cancelled, showing that fact and the date of such registration or revocation of authority to solemnize marriage.

Revocation
of authority.

(3) Whenever it is made to appear to the satisfaction of the Provincial Secretary that any person registered under the authority of subsection 1 of this section has ceased to possess the qualifications entitling him to be so registered, he may annul such registration and thereby revoke such authority.

Notice
thereof in
"Ontario
Gazette."

(4) Whenever any person is registered under the authority of subsection 1 of this section to solemnize marriage, and whenever any registration has, as to any person, been cancelled, and the authority thereby revoked, the Provincial Secretary shall give notice in the *Ontario Gazette* of such registration and revocation of such authority, stating therein

the name of the person registered as authorized, or as to whom such registration has been cancelled, and publication in the *Ontario Gazette* of notice, purporting to be by the Provincial Secretary, that any person named therein has been registered as authorized to solemnize marriage shall in all courts be conclusive evidence of such registration and of the authorization and qualification of such person to solemnize marriage, unless and until it shall appear by notice published in the *Ontario Gazette* as aforesaid that such registration has been cancelled and the authority thereby revoked. 1927, c. 47, s. 3.

3. Every marriage duly solemnized according to the rites, usages and customs of the religious Society of Friends, commonly called Quakers, shall be valid; and all the duties imposed by this Act, or by *The Vital Statistics Act*, upon a minister or clergyman, shall, with regard to such marriage, be performed by the clerk or secretary of the society or of the meeting at which the marriage is solemnized; but nothing herein shall require the marriage to be celebrated or solemnized by such clerk or secretary. 1927, c. 47, s. 4.

Marriages solemnized by Quakers.
Rev. Stat. c. 78.

LICENSE, CERTIFICATE OR PROCLAMATION REQUIRED.

4.—(1) No minister, clergyman or other person shall solemnize any marriage unless duly authorized so to do by license under the hand and seal of the Lieutenant-Governor or of his deputy, or by a certificate under this Act, unless the intention of the persons to intermarry has been published as provided by subsection 2.

Marriages not to be solemnized unless under license or certificate.

(2) Such intention shall be proclaimed once openly, and in an audible voice, either in the church, chapel or meeting-house in which one of the persons has been in the habit of attending worship, or in some church, chapel, meeting-house or place of public worship of the congregation or religious body with which the minister or clergyman who performs the ceremony is connected, in the local municipality, parish, circuit or pastoral charge, where one of the persons has, for the space of fifteen days immediately preceding, had his or her usual place of abode; and where both the persons do not reside in the same local municipality, parish, circuit or pastoral charge, and the marriage is not authorized by license or certificate, a similar proclamation shall be made in the local municipality, parish, circuit or pastoral charge, being within Canada, where the other of the contracting parties has, for the space of fifteen days immediately preceding, had his or her usual place of abode; and where the proclamation last mentioned is required such marriage shall not be solemnized until there is delivered to the person proposing to solemnize it a certificate, Form 1, showing that such proclamation has been made.

Or after proclamation of intention.

Made on
Sunday.

(3) Every such proclamation shall be made on a Sunday, immediately before the service begins or immediately after it ends, or at some intermediate part of the service.

Certificate of
proclamation of in-
tention.

(4) The certificate of proclamation shall be signed by the clergyman, minister, clerk, secretary or other person who actually proclaimed the same, and shall show the official position of the person who signs it. 1927, c. 47, s. 5.

Proclama-
tion or
license to
lapse unless
marriage
takes place
within three
months.

5.—(1) No marriage shall be solemnized under the authority of any proclamation of intention to intermarry unless such proclamation has been made at least one week previously, nor unless the marriage takes place within three months after the Sunday upon which the proclamation was made; nor shall a marriage be solemnized under the authority of any license or certificate unless within three months after the date thereof.

Hours dur-
ing which
marriages
not to take
place.

(2) No clergyman, minister or other person shall solemnize a marriage between the hours of ten o'clock after noon and six o'clock before noon unless he is satisfied from evidence adduced to him that the proposed marriage is legal and that exceptional circumstances exist which render its solemnization between those hours advisable.

Witnesses
required.

(3) No clergyman, minister or other person shall solemnize a marriage without the presence of at least two adult witnesses, and two or more of such witnesses shall affix their names as witnesses to the record in the register prescribed by section 30.

Issuer of
marriage
licenses not
to solemnize
the marriage.

(4) No clergyman, minister or other person who is an issuer of marriage licenses shall solemnize the marriage in any case in which he has issued the license or the certificate provided for by section 7 authorizing such marriage, but this subsection shall not apply to any of the provisional judicial districts except Muskoka.

Exceptions.

License and
certificates
to be deliver-
ed to person
solemnizing
marriage.

(5) The certificate or license to marry or the certificate of proclamation, when such certificate is required, shall be left with the clergyman, minister or other person who solemnizes the marriage, and he shall forthwith after such solemnization endorse upon the certificate or license the particulars mentioned in Form 4, and thereupon forward such certificate or license to the Registrar-General. 1927, c. 47, s. 6.

Protection of
clergymen
solemnizing
marriages in
good faith.

6. No clergyman, minister or other person who solemnizes a marriage ceremony after banns have been published or a license or certificate has been issued under this Act in respect thereto shall be subject to any action or liability for damages or otherwise by reason of there having been any legal impediment to the marriage unless, at the time when he performed the ceremony, he was aware of the impediment. 1927, c. 47, s. 7.

7. A certificate, Form 2, according to the circumstances of the case may, at the option of the applicant, be substituted and shall have the same legal effect as a license. 1927, c. 47, s. 8.

Issue of Licenses and Certificates.

8.—(1) Marriage licenses and certificates in lieu of marriage licenses shall be issued from the office of the Provincial Secretary, and the clerk of every city, town and incorporated village and every police magistrate having jurisdiction in territory without municipal organization shall be, *ex-officio*, an issuer of marriage licenses and, subject to any regulations as hereinafter provided, shall furnish marriage licenses to persons requiring the same.

Certificate in lieu of marriage license.

Issue of marriage licenses and certificates, certain municipal clerks and certain police magistrates issuers *ex-officio*.

(2) The Lieutenant-Governor in Council may, where it is deemed expedient for the public convenience, appoint the clerk of any township, or any person resident in the Provisional County of Haliburton or in a township adjacent thereto, or in a provisional judicial district, an issuer of marriage licenses. 1927, c. 47, s. 9.

Issuers of licenses in townships and un-organized territory.

9. Every license under the hand and seal of the Lieutenant-Governor or his deputy, and every certificate signed by the Provincial Secretary or Assistant Provincial Secretary, for the purpose of the solemnization of a marriage, shall be and remain valid notwithstanding that the Lieutenant-Governor or his deputy, or the Provincial Secretary or the Assistant Provincial Secretary has ceased to hold office before the time of the issue of the license or certificate. 1927, c. 47, s. 10.

Validity of licenses and certificates.

10. If any person issues any license or certificate for the solemnization of marriage without the authority of the Lieutenant-Governor in Council, unless under the authority of section 11, he shall incur a penalty of \$100 for every license or certificate so issued. 1927, c. 47, s. 11.

Unauthorized issue of licenses or certificates. Penalty.

Appointment of Deputy Issuers.

11.—(1) An issuer of marriage licenses or certificates may, with the approval in writing of the Provincial Secretary or of the mayor or reeve of the municipality of which he is clerk, appoint, by writing under his hand, a deputy or deputies to act for him.

Appointment of deputy issuers of marriage licenses.

(2) A deputy while so acting shall have the power of the issuer appointing him.

Power of deputy-issuers.

(3) The issuer shall, upon appointing a deputy, forthwith transmit to the Provincial Secretary a notice of the appointment, and of the cause thereof, and of the name and official

Notice of appointment of deputy.

position of the person by whom the appointment has been approved, and the Lieutenant-Governor may at any time annul the appointment.

How licenses
to be signed
by deputy.

(4) The deputy shall sign each license and certificate issued by him with the name of the issuer as well as his own name in the following manner:—“*A. B.—Issuer of Marriage Licenses, per C. D., Deputy-Issuer.*” 1927, c. 47, s. 12.

Identifica-
tion of
applicants
for licenses.

12. An issuer of marriage licenses shall have full power and authority to require the production of witnesses to identify the applicants for licenses, or either of them, and also to examine, under oath or otherwise, the applicants or other witnesses as to any material inquiry pertaining to the issuance of the license as he may deem necessary or advisable. 1927, c. 47, s. 13.

Record to
be kept
by issuer.

13.—(1) An issuer of marriage licenses or certificates shall keep in his office a register or record of all licenses or certificates issued by him stating the serial number, the date of issue of the license or certificate and the names and addresses of the parties to the intended marriage.

Searches
of records.

(2) Any person shall be entitled, on signing an application in the prescribed form, to have a search made respecting any license or certificate issued within three months preceding the date of the application. 1927, c. 47, s. 14.

Effect of Irregular Issue of License or Certificate.

Irregularity
in issue not
to affect.

14. No irregularity in the issue of a license or certificate, where it has been obtained or acted on in good faith, shall invalidate a marriage solemnized in pursuance thereof. 1927, c. 47, s. 15.

Unissued Licenses or Certificates.

Unissued
licenses to be
returned to
Provincial
Secretary.

15. Every issuer of licenses or certificates and every other person having unissued licenses or certificates in his possession, power, custody, or control, shall, whenever required so to do, transmit the same to the Provincial Secretary; and the property in all unissued licenses and certificates shall be and remain in His Majesty. 1927, c. 47, s. 16.

Expenses of Procuring Licenses.

Regulations.

16. The Lieutenant-Governor in Council may make regulations defining the terms and conditions upon which marriage licenses and certificates shall be furnished and issued. 1927, c. 47, s. 17.

MARRIAGE OF PARTY UNDER EIGHTEEN YEARS OF AGE.

17.—(1) Save in cases provided for by subsections 3 and 4 of this section and by section 18, where either of the parties to an intended marriage, not a widower or a widow, is under the age of eighteen years, the consent in writing of the father if living, or, if he is dead, or living apart from the mother and child, and is not maintaining or contributing to the support of such child, the consent in writing of the mother if living, or of a guardian if any has been duly appointed, shall be obtained from the father, mother or guardian before the license is issued or before the proclamation of the intention of the parties to intermarry is made, and such consent shall be deemed to be a condition precedent to a valid marriage, unless the marriage has been consummated or the parties have after the ceremony cohabited and lived together as man and wife.

Consent to marriage of minor under eighteen.

(2) The execution of any consent required by this section shall be verified by affidavit or statutory declaration.

Consent to be verified.

(3) In the case of a party under the age of eighteen years, and not being a widower or a widow, if the father and mother are dead and there is no guardian duly appointed the issuer, on being satisfied as to the facts, may grant the license or certificate.

Where parents are dead and there is no guardian.

(4) Where the parent whose consent is required has been declared to be insane or is confined in a hospital for the insane or, though living, is not a resident of Ontario, and is not in Ontario, or where such parents' whereabouts is unknown, at the time of the application for a license or certificate and the party under the age of eighteen years is and has been so resident for the next preceding twelve months, the issuer, on being satisfied by evidence of these facts, may grant the license or certificate. 1927, c. 47, s. 18.

If parents not resident in the Province.

18. No license or certificate shall be issued to any person under the age of fourteen years, except where a marriage is shown to be necessary to prevent the illegitimacy of offspring and a certificate to that effect is given by a legally qualified medical practitioner known to the issuer, and, except in such a case, no person shall celebrate the marriage ceremony in any case in which either of the contracting parties is under the age of fourteen years to the knowledge or information of such person. 1927, c. 47, s. 19.

No license to be issued or marriage to be celebrated where either party under fourteen.

19. Notwithstanding anything in this Act contained, if the Provincial Secretary considers that circumstances justify the issue of a marriage license in any particular case, he may, in his absolute discretion, authorize an issuer of marriage licenses to issue a license upon the production of such evidence as the Provincial Secretary may deem sufficient. 1927, c. 47, s. 20.

Issue of licenses at discretion of Provincial Secretary in special cases.

PENALTY FOR MARRYING IDIOT OR INSANE PERSON.

Insane or
idiot or
intoxicated
person.

20. If any issuer of marriage licenses issues a license for a marriage or if any minister, clergyman or other person solemnizes a marriage, knowing or having reason to believe that either of the parties to the intended marriage or to the marriage is an idiot or insane or is under the influence of intoxicating liquor, he shall incur a penalty not exceeding \$500, and shall also be liable to imprisonment for any term not exceeding twelve months. 1927, c. 47, s. 21.

PENALTY UPON DISQUALIFIED MINISTER.

Penalty
for solemn-
izing mar-
riage with-
out author-
ity.

21. Any person not registered with and certified by the Provincial Secretary, as hereinbefore provided, or any person so registered and certified, but disqualified by change of residence or for any other reason, who solemnizes or undertakes to solemnize any marriage, shall incur a penalty of \$500, and shall also be liable to imprisonment for any term not exceeding twelve months, but such penalties shall be recoverable or imposed only by action at the suit of the Crown. 1927, c. 47, s. 22.

AFFIDAVIT FOR ISSUE OF LICENSE OR CERTIFICATE.

Affidavit to
be made by
one of the
parties be-
fore licenses
granted.

22.—(1) Before a license or certificate is issued one of the parties to the intended marriage shall personally make an affidavit, Form 3, before the issuer which shall state,—

(a) in what county or district it is intended that the marriage shall be solemnized, and in what city, town, village, or place therein; and

(b) that he or she believes there is no affinity, consanguinity, prior marriage, or other lawful cause or legal impediment to bar or hinder the solemnization of the marriage;

Affidavit as
to residence
in Ontario.

(c) that one of the parties has, for the space of fifteen days immediately preceding the issue of the license, had his or her usual place of abode within Ontario;

Age.

(d) the age of the deponent, and that the other contracting party is of the full age of eighteen years, or the age of such other contracting party, if under the age of eighteen years, as the case may be.

Condition.

(e) the condition in life of each of the parties, whether bachelor, widower, spinster, widow or divorcee; and

Facts show-
ing whether
consent is
necessary.

(f) the facts necessary to enable the issuer to judge whether or not the required consent has been duly given in the case of any party under the age of eighteen years, or whether or not such consent is necessary;

(g) such information as shall be prescribed by Order in Council. Further information.

(2) If both of the parties have not, for the space of fifteen days immediately preceding the date of the affidavit, had their usual place of abode within Ontario, the license or certificate may be issued upon the applicant proving by the production of copies of a newspaper published in the municipality where the parties have had their usual place of abode, or if there is no such newspaper, a newspaper published as near to such municipality as may be, and containing notice of the intended marriage that such notice has been published once a week for three successive weeks immediately preceding the application for the license or certificate. Where parties have not resided in locality of marriage for fifteen days.

(3) Upon the applicant for a license or certificate stating that no such advertisement, as required by subsection 2, has been published, the issuer may report the circumstances to the Provincial Secretary, who, if he is satisfied that the reason for having the marriage solemnized in the place mentioned in the affidavit is not in order to evade due publicity or for any other improper purpose, may in writing authorize the issue of the license or certificate, and in that case, a fee of \$5 shall be paid for such authorization in addition to the usual license fee. Special action by Provincial Secretary where publication has not taken place.

(4) Nothing in the next preceding two subsections shall dispense with the proofs required by subsection 1, except that of residence as set out in clause c of that subsection. Other proofs not dispensed with.

(5) In addition to the proofs required by subsection 1 at the time of the application for a license or certificate there shall be produced and filed with the issuer, Documents to be filed with issuer.

(a) a copy of the registration of birth of the other party to the marriage certified by the Registrar General or other proper officer in this behalf; or

(b) an affidavit made by,—

(i) such other party to the marriage; or

(ii) by some person being a member of his or her family and having personal knowledge of the facts,

stating the age, date and place of birth of such other party; provided that where such affidavit is made by such other party to the marriage it shall be sufficient to state the age, date and place of birth of such other party, according to the best of his knowledge, information and belief.

(6) Where both the parties to the intended marriage attend before the issuer and each of them makes the affidavit required in subsection 1, the issuer may in his discretion dispense with the proof required by subsection 5. 1927, c. 47, s. 23. When proof of age may be dispensed with.

Prohibited
degrees to be
set forth in
form of
affidavit.

23.—(1) The affidavit required by subsection 1 of section 22, together with a statement, Form 5, showing the degrees of affinity and consanguinity which bar or hinder the solemnization of marriage, and such extracts from this Act as are necessary to show what persons are authorized to solemnize marriage in Ontario or an epitome of such extracts shall be printed upon the back or elsewhere on each license or certificate, and no license or certificate which has not such memorandum printed thereon, shall be issued.

Changes in
degrees pro-
vided for.

(2) If at any time hereafter changes are made in the law affecting the degrees of relationship within which marriage may not be lawfully contracted, the Lieutenant-Governor in Council may direct such changes to be made in Form 5, so as to make it conformable to the law for the time being. 1927, c. 47, s. 24.

LICENSE NOT TO BE ISSUED IN CERTAIN CASES.

When issuer
has personal
knowledge
that proper
consent not
obtained.

24. Where the person having authority to issue the license or certificate has personal knowledge that the facts are not as required by section 17, he shall not issue the license or certificate; and if he has reason to believe or suspect that the facts are not as so required, he shall, before issuing the license or certificate, require further evidence to his satisfaction in addition to the affidavit prescribed by section 22. 1927, c. 47, s. 25.

Particulars
to be sent to
Registrar-
General.

25. Every issuer of marriage licenses shall, immediately upon issuing a marriage license or certificate, fill up on a form such of the particulars contained in Form 4 as he is able to give, and shall forward the same, together with the consent verified by affidavit and any other evidence obtained pursuant to the provisions of section 17 and the birth certificate or affidavit required by subsection 5 of section 22, and any further evidence obtained under the provisions of section 24, forthwith to the Registrar-General. 1927, c. 47, s. 26.

Marriage
not to be
performed
within three
days of date
of license.

26.—(1) Every license shall be dated and every person who solemnizes a marriage under the authority of such license earlier than the third day after the day of the date of such license shall be guilty of an offense and shall incur a penalty of not more than \$100; provided, however, that the Provincial Secretary in his absolute discretion may authorize the solemnization of marriage earlier than such third day in which case there shall be no penalty hereunder.

Exception.

(2) Nothing in subsection 1 shall apply to or affect the solemnization of any marriage under the authority of a license issued under section 19 of this Act. 1927, c. 47, s. 27 (1, 2).

27.—(1) No fee shall be payable for a license or certificate except the sum of \$5, of which sum \$4 shall be remitted by the issuer to the Treasurer of Ontario and the sum of \$1 shall be allowed to the said issuer, which he shall be entitled to retain for his own use, unless and until the council of the municipality shall commute the said allowance for a fixed sum, payable annually by the municipality to the issuer and thereafter the aforesaid allowance on the issue of each license or certificate shall belong to the municipality. Fee for license or certificate.

(2) When the council and the issuer do not agree upon the amount of the said commutation to be fixed, such amount may be fixed by the county judge, but in no case shall such amount exceed the sum of \$2,000. 1927, c. 47, s. 28. Disagreement as to commutation.

MARRIAGE OUT OF CHURCH VALID.

28. It shall not be a valid objection to the legality of a marriage that the same was not solemnized in a consecrated church or chapel or within any particular hours. 1927, c. 47, s. 29. Objections on grounds of place or hour of marriage.

MARRIAGE CERTIFICATES.

29. Every clergyman, minister or other person who solemnizes a marriage, and the clerk or secretary of a society of Quakers, or of the meeting at which the marriage is solemnized, shall, at the time of the marriage, if required by either of the parties thereto, give a certificate of the marriage under his hand, specifying the names of the persons married, the time of the marriage, and the names of two or more persons who witnessed it, and specifying also whether the marriage was solemnized pursuant to license or certificate under this Act, or after proclamation of intention to intermarry; and the clergyman, minister, clerk or secretary may demand twenty-five cents for a certificate given by him. 1927, c. 47, s. 30. Certificate to be given by person solemnizing marriage when required.

REGISTRATION OF MARRIAGES.

30. Every clergyman, minister or other person authorized to solemnize marriage shall, immediately after he has solemnized a marriage, enter in a register to be kept by him for the purpose, unless a similar register is kept in the church at which he officiates, in which case the entries shall be made in that book, the particulars mentioned in Form 4, and shall authenticate the same by his signature. 1927, c. 47, s. 31. Marriages to be registered by person solemnizing.

31.—(1) Every clergyman, minister or other person authorized to solemnize marriage, where a marriage register is not already possessed by any church or congregation over which he is placed or has charge, shall make application for a register Clergyman to apply for marriage register to clerk of municipality.

to the clerk of the local municipality within which the church or congregation is situate, and the clerk shall thereupon supply such register at the cost of the municipality.

Additional registers.

(2) One additional register may be supplied, at the cost of the municipality, to any clergyman, minister or other person authorized to solemnize marriage, and a register shall also, on application, be supplied at the like cost to any clergyman or minister in the municipality who is not in charge of a church or congregation.

In unorganized townships.

(3) Every clergyman or minister in charge of a church or congregation in an unorganized township shall, upon a written application to be made by him to the Registrar-General, receive a register to be supplied by the Registrar-General. 1927, c. 47, s. 32.

(As to returns to be made, see The Vital Statistics Act, Rev. Stat. c. 78.)

Property in registers.

32. The register, by whomsoever furnished, shall be the property of the denomination or body to which the clergyman, minister or other person to whom it is delivered belongs at the time of the delivery thereof, and where he is in charge of a particular congregation of such denomination, it shall belong to the trustees or other body in which the property of the church or meeting house used by such congregation for its ordinary services is vested. 1927, c. 47, s. 33.

Marriages to be deemed valid if in good faith and intended to be in compliance with Act.

33. Every marriage solemnized in good faith and intended to be in compliance with this Act between persons not under a legal disqualification to contract such marriage shall be deemed a valid marriage so far as respects the civil rights in Ontario of the parties or their issue, and in respect of all matters within the jurisdiction of this Legislature, notwithstanding that the clergyman, minister or other person who solemnized the marriage was not duly authorized to solemnize marriage, and notwithstanding any irregularity or insufficiency in the proclamation of intention to intermarry or in the issue of the license or certificate, or notwithstanding the entire absence of both; provided that the parties, after such solemnization, lived together and cohabited as man and wife. 1927, c. 47, s. 34.

Proviso.

SUPREME COURT MAY DECLARE CERTAIN MARRIAGES INVALID.

Declaration of nullity of marriage.

34.—(1) Where a form of marriage is gone through between persons either of whom is under the age of eighteen years without the consent of the father, mother or guardian of such person, when such consent is required by the provisions of this Act, in the case of a license, or where, without a similar consent in fact, such form of marriage is gone through between such persons after a proclamation of their

intention to intermarry, such form of marriage shall be void and the Supreme Court shall have jurisdiction and power to entertain an action by the person who was at the time of the ceremony under the age of eighteen years, to declare and adjudge that a valid marriage was not effected or entered into, and shall so declare and adjudge if it is made to appear that the marriage has not been consummated and that such persons have not, after the ceremony, cohabited and lived together as man and wife, and that the action is brought before the person bringing it has attained the age of nineteen years.

(2) The Court shall not declare a marriage void where carnal intercourse has taken place between the parties before the ceremony. 1927, c. 47, s. 35. When Court not bound to grant relief.

35.—(1) No declaration that a valid marriage was not effected or entered into shall in any case be made upon consent of parties, admissions, or in default of appearance or of pleading or otherwise than after a trial. No judgment by consent or in default of appearance or pleading.

(2) At every such trial the evidence shall be taken *viva voce* in open court, but nothing in this subsection shall prevent the use of the depositions of witnesses residing out of Ontario or of witnesses examined *de bene esse*, where, according to the practice of the Court, such depositions may be read in evidence. Evidence to be *viva voce* in open court.

(3) The Court may require both or either of the parties to be examined before the Court touching the matters in question in the action, and may require either party to submit to physical examination by a duly qualified medical practitioner to be appointed by the Court. Court may require examination of parties.

(4) The Attorney-General of Ontario shall be made a party defendant in any such action. 1927, c. 47, s. 36. Attorney-General to be party to action.

PENAL PROVISIONS.

36.—(1) Every person who wilfully makes or causes to be made a false statement touching the particulars required to be recorded or reported under this Act, shall incur a penalty of \$50. Making false statements or reports.

(2) Every person guilty of an act or omission in violation of any provision of this Act, for which no other penalty is provided, shall incur a penalty of \$20. Where no other penalty provided.

(3) Every prosecution for a penalty imposed by or under the authority of this Act shall be commenced within one year after the act or omission complained of. Limitation of prosecutions.

(4) No prosecution for a penalty imposed by or under the authority of this Act shall be brought without the permission of the Attorney-General. Prosecutions; permission of Attorney-General necessary.

(5) Every such penalty shall be recoverable under *The Summary Convictions Act*. 1927, c. 47, s. 37, *part*. Application of Rev. Stat. c. 121.

FORM 1.

(Section 4.)

CERTIFICATE OF PROCLAMATION OF INTENTION TO INTERMARRY.

I hereby certify that on Sunday, the _____ day of _____, 19____, the intention of A.B., of _____, (state residence) and C.D., of _____ (state residence) to intermarry was duly proclaimed by me in _____ Church, being the church in the _____ (state name of township or other local municipality or parish, circuit or pastoral charge). I further certify that I verily believe the said A.B. (or C.D.) had his (or her) usual place of abode in the said _____ (township or other local municipality or parish, circuit or pastoral charge) for the space of fifteen days immediately preceding the said Sunday.

Dated this _____ day of _____, 19____, Minister of _____ Church.

1927, c. 47, Form 1.

FORM 2.

(Section 7.)

CERTIFICATE BEFORE MARRIAGE WITHOUT PROCLAMATION.

These are to certify that A.B., of _____ and C.D., of _____ being minded, as it is said, to enter into the contract of marriage, and being desirous of having the same duly solemnized, the said A.B. (or C.D.) has made oath, as required by law:—

1. That he (or she) believes that there is no affinity, consanguinity, prior marriage, or any other lawful cause or legal impediment, to bar or hinder the solemnization of the said marriage;

2. That said A.B. (or C.D. or both, as the case may be), has, (or have) had his (or her, or their) usual place of abode, for the space of fifteen days last past, within the city (county or district) of _____ namely, in the township (town or village) of _____ in the said county (or district) of _____;

3. That the said A.B. and C.D. are of the full age of eighteen years;

[Or that A.B. or C.D. is a widower or widow; or is under the age of eighteen years, and that the consent of E.D., whose consent to said marriage is required by law, has been obtained; or that the father of the said (party under age) is dead, and no guardian of the person of the said (party) has been appointed, and the mother of the said (party) is dead and there is no person having authority to give consent to said marriage (as the case may be);]

These are therefore to certify that the requirements of *The Marriage Act* have been complied with and such marriage may be solemnized in the County of _____ (naming the county or district within which it is intended that the marriage shall be solemnized).

Given under my hand and seal at _____ this _____ day of _____ 19____.

G.H.,
Issuer (or Deputy-Issuer) of Licenses.

Issued from the Office of the Provincial Secretary for the Province of Ontario this _____ day of _____ 19____.

K.L.,
Provincial Secretary.

1927, c. 47, Form 2.

I CERTIFY that I solemnized the marriage of:

Bridegroom

Bride

(in the presence of)

Witness

Address

Witness

Address

in the of in the

County of ONTARIO

on the day of 192...

Name of

Bridegroom's Father

Maiden Name of

Bridegroom's Mother

Name of

Bride's Father

Maiden Name of

Bride's Mother

No.

(Registration Certificate Number and Signature of person solemnizing Marriage)

Address

Denomination

FORM 3.

(Section 22.)

AFFIDAVIT REQUIRED BY PROVISION OF THE MARRIAGE ACT BEFORE LICENSE IS GRANTED.

I, of the of in the of in the of in the Province of (occupation) make oath and say as follows:

THAT, for the space of fifteen days immediately preceding the date of this affidavit..... (Name in full of deponent or of the other contracting party or as the case may be) ha had..... (my, his, her or our) usual place of abode within the Province of Ontario.

THAT I believe there is no affinity, consanguinity, prior marriage or other lawful cause or legal impediment to bar or hinder the solemnization of the marriage, and

THAT the contents set forth herein are to the best of (my or our) knowledge, information and belief, true in every particular.

Names in full.....	.....	.....	.....
Occupation.....	.....	.....	.....
Age and Condition in Life.....	.....	.....	.....
Religious Denomination.....	Age	Bachelor, Widower, Divorcee	Age
Residence when Married.....	.....	Spinster, Widow, Divorcee	.....
Place of Birth.....	.....	.....	.....
Intended Place of Marriage.....	.....	.....	.....

Sworn before me at the

..... of.....

in the County of.....

this..... day of..... 192..

(Signature of Issuer)

(Signature of Deponent)

..... Issuer of Marriage Licenses at.....

1927, c. 47, Form 3.

FORM 4.

(Section 30.)

REGISTER OF MARRIAGES.

	BRIDEGROOM.
His name.	
Age.	
Residence when married	
Place of birth.	
Bachelor, Widower or Divorcee. (B., W. or D.)	
Occupation.	
Religious Denomination of Bridgroom.	
Names of Parents.	
	BRIDE.
Her name.	
Age.	
Residence when married.	
Place of birth.	
Spinster, Widow or Divorcee. (S., W. or D.)	
Religious Denomination of Bride.	
Names of Parents.	
Whether Married by License or Banns (L. or B.)	
SIGNATURES	
of Bridgroom	
of Bride	
of Witnesses	
	Residence
	Residence

I certify the above-named parties were married by me at
, in the County of , this day of
19 .

Minister of, etc.

FORM 5.

(Section 23.)

Degrees of affinity and consanguinity which, under the statutes in that behalf, bar the lawful solemnization of marriage.

A man may not marry his

1. Grandmother
2. Grandfather's wife
3. Wife's grandmother
4. Aunt
- †5. Uncle's wife
6. Wife's aunt
7. Mother
8. Step mother
9. Wife's mother
10. Daughter
11. Wife's daughter
12. Son's wife
13. Sister
14. Granddaughter
15. Grandson's wife
16. Wife's granddaughter
17. Niece
18. Nephew's wife
19. Wife's niece*
- †20. Brother's wife

A woman may not marry her

1. Grandfather
2. Grandmother's husband
3. Husband's grandfather
4. Uncle
5. Aunt's husband*
6. Husband's uncle.
7. Father
8. Step father
9. Husband's father
10. Son
11. Husband's son
12. Daughter's husband
13. Brother
14. Grandson
15. Granddaughter's husband
16. Husband's grandson
17. Nephew
18. Niece's husband
- †19. Husband's nephew
- †20. Husband's brother

The relationships set forth in this table include all such relationships, whether by the whole or half blood, and whether legitimate or illegitimate.

*By the Revised Statutes of Canada, 1906, c. 105, s. 2, it is enacted that "A marriage is not invalid merely because the woman is a sister of a deceased wife, or a daughter of a sister of a deceased wife of the man."

†By 13-14 Geo. V, c. 19, s. 3, Canada it is enacted that "A marriage is not invalid merely because the man is a brother of a deceased husband of the woman or is a son of such brother."

1927, c. 47, Form 5.

CHAPTER 182.

The Married Women's Property Act.

INTERPRETATION.

1. In this Act,—

"Contract."

(a) "Contract" shall include the acceptance of any trust or the office of executrix or administratrix;

"Property."

(b) "Property" shall include a thing in action. 1926, c. 44, s. 2.

PROPERTY RIGHTS AND LIABILITIES OF MARRIED WOMEN.

Capacity for holding property as *feme sole*.

2.—(1) A married woman shall be capable of acquiring, holding and disposing by will or otherwise of any real or personal property as her separate property in the same manner as if she were a *feme sole* without the intervention of a trustee. 1926, c. 44, s. 3.

Right of married woman to hold real and personal property.

(2) Every woman married on or after the first day of July, 1884, shall also be entitled to have and hold and to dispose of as her separate property all real and personal property belonging to her at the time of marriage.

Right of married woman to wages, etc.

(3) Every married woman shall have and hold as her separate property, and may dispose of as such, the wages, earnings, money and property gained or acquired by her in any employment, trade or occupation in which she is engaged or which she carries on and in which her husband has no proprietary interest, or gained or acquired by her by the exercise of any literary, artistic or scientific skill. 1927, c. 28, s. 36 (1).

Power to contract and to sue and be sued.

3. A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, either in contract or in tort or otherwise, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant or be made a party to any action or other legal proceeding brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property and not otherwise. 1926, c. 44, s. 4.

4.—(1) Every contract entered into by a married woman on or after the 13th day of April, 1897, otherwise than as an agent,—

Contracts on or after 13th April, 1897.

(a) shall be deemed to be a contract entered into by her with respect to and bind her separate property whether she was or was not in fact possessed of or entitled to any separate property at the time when she entered into such contract;

Whether possessed or not of property when contract entered into.

(b) shall bind all separate property which she may at the time or thereafter possess or be entitled to; and

(c) shall also be enforceable by process of law against all property which she may thereafter while discreet possess or be entitled to.

(2) Nothing in this section shall render available to satisfy any liability or obligation arising out of such contract any separate property which such married woman is restrained from anticipating. 1926, c. 44, s. 5.

Except where restraint on anticipation exists. 56-57 V., (Imp.), c. 63, s. 1.

5. The execution of a general power by will by a married woman shall have the effect of making the property appointed liable for her debts and other liabilities, and such property may be seized and sold under an execution against her personal representative after her separate property has been exhausted. 1926, c. 44, s. 6.

Execution of general power.

6. Notwithstanding that a married woman is restrained from anticipation the court may, if it thinks fit, where it appears to the court to be for her benefit, by judgment or order, with her consent, bind her interest in any property. 1926, c. 44, s. 7.

Power of court to bind interest. Imp. Act. 44-45 V., c. 41, s. 39.

7. Every married woman shall have in her own name against all persons whomsoever, including her husband, the same remedies for the protection and security of her own separate property as if such property belonged to her as a *feme sole*, but, except as aforesaid no husband or wife shall be entitled to sue the other for a tort. 1926, c. 44, s. 8.

Remedies of married women for protection and security of separate property. Torts as between husband and wife.

8. A woman after her marriage shall continue to be liable in respect and to the extent of her separate property for all debts contracted and all contracts entered into or wrongs committed by her before her marriage, and she may be sued for any such debt and for any liability in damages or otherwise under any such contract or in respect of any such wrong; and all sums recovered against her in respect thereof or for any costs relating thereto, shall be payable out of her separate property; and, as between her and her husband unless there be any contract between them to the contrary, her separate

Wife's anti-nuptial debts, contracts and torts.

property shall be deemed to be primarily liable for all such debts, contracts or wrongs and for all damages or costs recovered in respect thereof. 1926, c. 44, s. 9.

Parties to actions.

9.—(1) A husband and wife may be jointly sued in respect of any such debt or other liability, whether for contract or for any wrong contracted or incurred by the wife if the plaintiff in the action seeks to establish his claim either wholly or in part against both of them.

Husband's costs.

(2) If in any such action or in any action brought in respect of any such debt or liability against the husband alone, it is not found that the husband is liable in respect of any property of the wife so acquired by him or to which he shall have become so entitled he shall have judgment for his costs of defense whatever may be the result of the action against the wife if sued jointly with him.

What judgment may be entered.

(3) In any such action against husband and wife jointly if it appears that the husband is liable for the debt or damages recovered or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband personally and against the wife as to her separate property; and as to the residue if any of such debt and damages the judgment shall be a separate judgment against the wife as to her separate property only. 1926, c. 44, s. 10.

Legal representative of married woman.

10. For the purposes of this Act the legal personal representative of any married woman shall, in respect of her separate estate, have the same rights and liabilities and be subject to the same jurisdiction as she would have had or been subject to if she were living. 1926, c. 44, s. 11.

Saving of settlements, and restraints against anticipation.

11. Nothing in this Act shall interfere with or affect any settlement or agreement for a settlement made or to be made, whether before or after marriage, respecting the property of any married woman, or shall interfere with or render inoperative any restriction against anticipation at present attached or to be hereafter attached to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, will or other instrument; but no restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property to be made or entered into by herself shall have any validity against debts contracted by her before marriage, and no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors. 1926, c. 44, s. 12.

Liabilities.

12. The provisions of this Act as to the liabilities of married women shall extend to all liabilities by reason of any

breach of trust or devastavit committed by a married woman who is a trustee or executrix or administratrix, either before or after her marriage, and her husband shall not be subject to such liabilities unless he has acted or intermeddled in the trust or administration. 1926, c. 44, s. 13.

SUMMARY TRIAL OF QUESTIONS OF PROPERTY BETWEEN
HUSBAND AND WIFE.

13.—(1) In any question between husband and wife as to the title to or possession of property, either party, or any corporation, company, public body or society in whose books any stocks, fund or shares of either party are standing may apply in a summary way to a judge of the Supreme Court or at the option of the applicant irrespectively of the value of the property in dispute, to the judge of the county or district court of the county or district in which either party resides; and the judge may make such order with respect to the property in dispute and as to the costs of and consequent on the application as he thinks fit or may direct such application to stand over from time to time, and any inquiry or issue touching the matters in question to be made or tried in such manner as he shall think fit.

Summary disposal of questions between husband and wife as to property.

(2) All proceedings in a county or district court under this section, in which by reason of the character or value of the property in dispute, such court would not have had jurisdiction if this Act had not been passed, may at the option of the defendant or respondent be removed as of right into the Supreme Court, but any order made or act done in the course of the proceedings prior to the removal shall be valid unless an order is made to the contrary by the Supreme Court.

Removal of proceedings from county court into Supreme Court.

(3) The judge, if either party so requests, may hear any such application in private.

Hearing.

(4) Any such corporation, company, public body or society shall, in the matter of any such application, for the purposes of costs or otherwise be treated as a stakeholder only.

Corporation's costs.

(5) An appeal shall lie to the Appellate Division from any order made under this section where the value of the property in dispute exceeds \$200. 1926, c. 44, s. 14.

Appeal.

ORDER OF PROTECTION.

14.—(1) Any married woman

(a) having a judgment for alimony; or

(b) who lives apart from her husband, having been obliged to leave him from cruelty or other cause which by law justifies her leaving him and renders him liable for her support; or

When married woman may obtain an order of protection for the earnings of her minor children.

- (c) whose husband is a lunatic either with or without lucid intervals; or
- (d) whose husband is undergoing sentence of imprisonment in the Provincial Penitentiary or in any gaol for a criminal offence; or
- (e) whose husband from habitual drunkenness, profligacy or other cause neglects or refuses to provide for her support and that of his family; or
- (f) whose husband has never been in Ontario; or
- (g) who is deserted or abandoned by her husband;

Purport and effect of such order.

may obtain an order of protection entitling her, notwithstanding her coverture, to have and to enjoy all the earnings of her minor children, and any acquisitions therefrom, free from the debts and obligations of her husband and from his control or disposition, and without his consent, in as full and ample a manner as if she continued sole and unmarried.

How and by whom an order discharging, protection may be obtained.

(2) The married woman may at any time apply, or the husband or any of the husband's creditors may at any time, on notice to the married woman, apply for the discharge of the order of protection; and if an order for such discharge is made the same may be registered or filed in the same manner as the original order.

By whom to be made in cities and towns.

(3) Either order may issue in duplicate, and where the married woman resides in a city or town in which there is a police magistrate the order of protection or any order discharging the same shall be made by the police magistrate and shall be registered in the registry office of the registry division in which the city or town is situate.

Registration.

By whom order made elsewhere.

(4) Where the married woman does not reside in a city or town in which there is a police magistrate the order shall be made by the judge or one of the judges or the acting or deputy judge of the division courts or a division court of the county or district in which the married woman resides; and instead of being registered shall be filed for public inspection with the clerk of the division court of the division within which the married woman resides.

Hearing.

(5) The hearing of an application for an order of protection or for an order discharging the same may be public or private at the discretion of the judge or police magistrate.

Order not to have effect until registered or filed.

(6) The order for protection shall have no effect until it is registered or filed, and the registrar or clerk shall immediately on receiving the order endorse thereon the day of registering or filing the same.

Operation of order discharging.

(7) The order discharging an order of protection shall not be retroactive.

(8) The order of protection shall protect the earnings of the minor children of the married woman until an order is made discharging such order of protection, and the married woman shall continue to hold and enjoy to her separate use whatever, during the interval between the registering or filing of the order of protection and the making of the order discharging the same, she may have acquired by the earnings of her minor children. 1926, c. 44, s. 15.

From what
time order
of protection
to take effect.

NOTE.—*For provisions as to contracts of married women prior to 13th May, 1897, and as to the rights and liabilities of married women prior to that date see R.S.O. 1914, chapter 149. These provisions are neither consolidated nor repealed.*

CHAPTER 183.

The Fatal Accidents Act.

Interpretation.

"Child."

1. In this Act,

(a) "Child" shall include son, daughter, grandson, granddaughter, stepson, stepdaughter, adopted child, and a person to whom the deceased stood *in loco parentis*;

"Parent."

(b) "Parent" shall include father, mother, grandfather, grandmother, stepfather, stepmother, a person who adopted a child, and a person who stood *in loco parentis* to the deceased. R.S.O. 1914, c. 151, s. 2.

Liability for damages where death caused by wrongful act, neglect, or default.

2. Where the death of a person has been caused by such wrongful act, neglect or default, as, if death had not ensued, would have entitled the person injured to maintain an action and recover damages in respect thereof, the person who would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under circumstances amounting in law to culpable homicide. R.S.O. 1914, c. 151, s. 3.

For whose benefit and in whose name action to be brought.

3.—(1) Every such action shall be for the benefit of the wife, husband, parent and child of the person whose death was so caused, and except as hereinafter provided shall be brought by and in the name of the executor or administrator of the deceased, and in every such action such damages may be awarded as are proportioned to the injury resulting from such death to the persons respectively for whom and for whose benefit such action is brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the beforementioned persons in such shares as may be determined at the trial. R.S.O. 1914, c. 151, s. 4 (1).

Apportionment.

Assessment of damages, insurance premiums.

(2) In assessing the damages in any action there shall not be taken into account any sum paid or payable on the death of the deceased or any future premiums payable under any contract of assurance or insurance. R.S.O. 1914, c. 151, s. 4 (2), *part*.

How money may be paid into court.

4. The defendant may pay into court one sum of money as compensation for his wrongful act, neglect or default, to all persons entitled to such compensation without specifying the shares into which it is to be divided. R.S.O. 1914, c. 151, s. 5.

5. Not more than one action shall lie for and in respect of the same subject matter of complaint; and every such action shall be commenced within twelve months after the death of the deceased and not afterwards. R.S.O. 1914, c. 151, s. 6. One action only to lie for the same cause. Limitation.

6.—(1) The plaintiff shall, in his statement of claim, set forth the persons for whom and on whose behalf the action is brought. Particulars of beneficiaries.

(2) There shall be filed with the statement of claim an affidavit by the plaintiff in which he shall state that to the best of his knowledge, information and belief the persons on whose behalf the action is brought as set forth in the statement of claim are the only persons entitled or who claim to be entitled to the benefit thereof. Proof as to persons entitled.

(3) The court in which the action is brought or a judge thereof, if of opinion that there is a sufficient reason for doing so, may dispense with the filing of the affidavit. R.S.O. 1914, c. 151, s. 7, *part*. Dispensing with proof.

7.—(1) If there is no executor or administrator of the deceased, or there being such executor or administrator, no such action is, within six months after the death of the deceased, brought by such executor or administrator, such action may be brought by all or any of the persons for whose benefit the action would have been if it had been brought by such executor or administrator. When action may be brought by persons beneficially interested.

(2) Every action so brought shall be for the benefit of the same persons, and shall be subject to the same regulations and procedure, as nearly as may be, as if it were brought by such executor or administrator. R.S.O. 1914, c. 151, s. 8. Regulations and procedure in such case.

8.—(1) Where the compensation has not been otherwise apportioned a judge in chambers may apportion the same among the persons entitled. Apportionment.

(2) The judge may in his discretion postpone the distribution of money to which infants are entitled and may direct payment from the undivided fund. R.S.O. 1914, c. 151, s. 9, *part*. When payment may be postponed.

9. Where actions are brought by or for the benefit of two or more persons claiming to be entitled, as wife, husband, parent or child of the deceased, the court in which the actions or either of them are pending may make such order as it may deem just for the determination not only of the question of the liability of the defendant but of all questions as to the persons entitled under the provisions of this Act to the damages, if any, that may be recovered. R.S.O. 1914, c. 151, s. 10. Where several actions brought by rival claimants.

CHAPTER 184.

The Deserted Wives' and Children's Maintenance Act.

Order for
maintenance
of wife.

1.—(1) Where a wife has been deserted by her husband an information may be laid before a police magistrate having jurisdiction where the parties last resided together or where her husband then resides, who shall issue a summons against the husband in accordance with the form in the schedule to this Act and if upon the hearing it appears that the husband has deserted his wife without having made adequate provision for her maintenance and the maintenance of any of his children residing with her and that he is able to maintain them in whole or in part and he neglects or refuses so to do, the magistrate may order him to pay such weekly sum, not exceeding \$20, as may be deemed proper having regard to all the circumstances of the case and such order may be in the form given in the schedule to this Act.

Desertion of
wife.

(2) A married woman shall be deemed to have been deserted within the meaning of this section when she is living apart from her husband because of his acts of cruelty, or of his refusal or neglect, without sufficient cause, to supply her with food and other necessities when able so to do.

Cases of
adultery.

(3) No order shall be made in favour of a wife who is proved to have committed adultery unless the adultery has been condoned, and any order may be rescinded upon proof that the wife, since the making thereof, has been guilty of adultery if it has not been condoned.

Effect of
finding of
adultery.

(4) A finding by the magistrate that adultery has been proved shall not be evidence of the adultery in any other proceedings. 1927, c. 48, s. 2.

Order for
mainten-
ance of
child.

2.—(1) A father who has deserted his child may be summoned before a police magistrate or a judge of a juvenile court having jurisdiction where the father or the child then resides, who, if satisfied that such father has wilfully refused or neglected to maintain the child and has deserted the child, may order that the father shall pay such weekly sum, not exceeding \$20, with or without costs, as may by order be directed to the person named in the order for the support of such child, as the magistrate or the judge may consider proper, having regard to the means of the father and to any means the child may have for his support.

(2) A child shall be deemed to have been deserted by his father, within the meaning of this section, when the child is under the age of sixteen years and when the father has, without adequate cause, refused or neglected to supply such child with food or other necessities when able so to do. 1927, c. 48, s. 3.

When child deemed to have been deserted.

3. A complaint under this Act may be laid by a deserted wife or child or by a person having the care and custody of a deserted child or with the consent of the Crown attorney by any other person. 1927, c. 48, s. 4.

Who may lay complaint.

4. The judge or magistrate may in any order set a time limit, not exceeding thirty days, within which each sum of money ordered to be paid and the costs shall be paid. 1927, c. 48, s. 5.

Time limit.

5. Upon proof that the circumstances of any of the parties have changed since the making of any former order, any order may be varied, or at the instance of either party on notice to the other an application may at any time be reheard, and any order may be confirmed, rescinded, or varied,

Varying order or rehearing application.

(a) by the judge or magistrate who made the order, or,

(b) if such judge or magistrate be dead, ill, or absent from his territorial jurisdiction, by any other judge of the juvenile court or police magistrate whose jurisdiction in the same locality is such that an information similar to the original information, could be laid before him, or,

(c) in any case, by any judge of the juvenile court or police magistrate who has jurisdiction in the locality in which the person in whose favour the order is made resides. 1927, c. 48, s. 6.

6. Any application may be heard by the judge or magistrate in private. 1927, c. 48, s. 7.

Application may be heard in private.

7. Where it is necessary to incur expense in serving a warrant or summons or in carrying out any of the provisions of this Act, and the complainant is unable to pay such expenses, they may be paid out of such sum as may be appropriated by the Legislature for that purpose. 1927, c. 48, s. 8.

Payment of expenses.

8.—(1) Save where otherwise provided proceedings under the provisions of this Act shall be in accordance with the provisions of *The Summary Convictions Act*, and any order for the payment of money made hereunder may be enforced as if it were an order or conviction made under the said Act but imprisonment shall only be ordered under subsection 2 hereof.

Application of Rev. Stat. c. 121.

Enforcement
of order.

(2) Whenever default is made in the payment of any sum of money ordered to be paid the judge of the juvenile court or police magistrate who made the order, or, any other judge of the juvenile court or police magistrate before whom an information similar to the original information could be laid, or any judge of the juvenile court or police magistrate who has jurisdiction in the locality in which the person in whose favour the order is made resides,—

By
summons.

(a) may from time to time summon the person in default to explain the default, and

By warrant
to arrest.

(b) may, where service of the summons has been proved, and the person summoned does not appear or sufficient reason for his absence is not given, or where it appears that the summons cannot be served or where an order of imprisonment has been made, issue a warrant for the arrest of such person, and

By imprison-
ment.

(c) may, when a warrant has been issued, or where the person in default fails to satisfy the magistrate that such default is due to inability to pay, order and adjudge such person to be imprisoned for a term not exceeding three months unless the sums of money payable under the order are sooner paid. 1927, c. 48, s. 9.

Enforcement
of order
for payment
of money.

9. Any order for payment of money may also be filed with the clerk of any division court and enforced by execution and by judgment summons as in the case of a judgment in the division court. 1927, c. 48, s. 10.

SCHEDULE.

THE DESERTED WIVES' AND CHILDREN'S MAINTENANCE ACT.

SUMMONS.

(Referred to in section 1 (1).)

County (or District)
of

To A.B., of

Whereas application has this day been made by your wife (or child), C.B., to the undersigned Police Magistrate (or Justice of the Peace, *as the case may be*) for for a summons under *The Deserted Wives' and Children's Maintenance Act*, for that you have wilfully refused or neglected to maintain your said wife (*or your wife and family, as the case may be*) or your child, and have deserted your said wife or child. These are, therefore, to command you to appear before the undersigned or such police magistrate or justices as may then and there be present in my (*or our*) stead, at on the day after the service hereof, at the hour of in the noon, to show cause why an order should not be made against you, to pay to your said wife for her support (or for the support of her and your family, *as the case may be*, or to your child for his support), such weekly sum not exceeding \$20 as may be considered to be in accordance with your means and with the means of your said wife (*or child*).

Given under hand and seal day of 19 .
J.S. (L.S.)

THE DESERTED WIVES' AND CHILDREN'S MAINTENANCE ACT.

ORDER.

(Referred to in Section 1 (1).)

County (or District)

of

Upon reading the summons dated the day of
19 , issued by , Police Magistrate for the
(*or Justices of the Peace for*),

upon the application of C.B., wife or child of A.B., under the provisions of *The Deserted Wives' and Children's Maintenance Act*, and upon hearing all the parties (*or, as the case may be*), and the evidence adduced, and it appearing that the said C.B. is entitled to the benefit of the said Act; I (*or we*), the undersigned, do hereby order that the said A.B. do pay hereafter to his said wife, or her agent (*or his child or his child's agent*), authorized in writing, at , the sum of \$ per week for her support (*or for the support of her and the family of the said A.B. or for support of the child*), the first weekly payment to be made on the day of 19 , together with the costs of these proceedings, which amount to \$, which shall be paid on or before the day of , 19 .

Given under hand and seal day of 19 .
J.S. (L.S.)

2. PARENT AND CHILD.

CHAPTER 185.

The Parents Maintenance Act.

Liability of child. **1.**—(1) A son or daughter shall be liable for the support of his or her dependent parent to the extent hereinafter mentioned.

When parent to be deemed dependent. (2) A parent shall be deemed to be dependent, where by reason of age, disease, or infirmity he is unable to maintain himself. 1927, c. 49, s. 2.

Summons and order for maintenance. **2.**—(1) A dependent parent, or any other person with the consent in writing of the Crown attorney, may lay an information before a police magistrate where such parent, or any son or daughter resides, who shall issue a summons, in accordance with the form in the schedule hereto, and if upon the hearing it appears that the parent is dependent and that such son or daughter has sufficient means to provide in whole or in part for such parent, the magistrate, having regard to the whole circumstances of the case may order that such son or daughter shall pay for the support of such parent, a weekly sum of money not exceeding \$20, with or without costs, and such order may be in the form in the schedule hereto.

Power not affected by maintenance of parent by charity. (2) An order may be made under the provisions of this Act although the dependent parent is being cared for in any sanatorium, home, or asylum, or other eleemosynary institution.

Summoning more than one child. (3) Where there are several children the magistrate may require the summons to be served upon others not already summoned and may order such of them as ought, in his opinion, to contribute to the support of the parent, to share in the payments ordered and shall apportion the sum to be paid among the children having due regard to their ability and obligations.

Time limit. (4) The police magistrate may in any order set a time limit, not exceeding thirty days, within which each sum of money ordered to be paid and the costs shall be paid. 1927, c. 49, s. 3.

3. Upon proof that the circumstances of any of the parties have changed since the making of any former order, any order may be varied, or at the instance of either party on notice to the other an application may at any time be reheard, and any order may be confirmed, rescinded, or varied,

Varying
order or re-
hearing
application.

- (a) by the magistrate who made the order; or,
- (b) if such magistrate be dead, ill, or absent from his territorial jurisdiction, by any other police magistrate whose jurisdiction in the same locality is such that an information similar to the original information, could be laid before him; or
- (c) in any case, by any police magistrate who has jurisdiction in the locality in which the person in whose favour the order is made resides. 1927, c. 49, s. 4.

4.—(1) Save where otherwise provided proceedings under the provisions of this Act shall be in accordance with the provisions of *The Summary Convictions Act*, and any order for the payment of money made hereunder may be enforced as if it were an order or conviction made under the said Act but imprisonment shall only be ordered under subsection 2 hereof.

Application
of
Rev. Stat.
c. 121.

(2) Whenever default is made in the payment of any sum of money ordered to be paid the police magistrate who made the order, or, any other police magistrate before whom an information similar to the original information could be laid, or any police magistrate who has jurisdiction in the locality in which the person in whose favour the order is made resides,—

Enforcement
of order.

- (a) may from time to time summon the person in default to explain the default; and By summons.
- (b) may, where service of the summons has been proved, and the person summoned does not appear or sufficient reason for his absence is not given, or where it appears that the summons cannot be served or where an order of imprisonment has been made, issue a warrant for the arrest of such person; and By warrant
to arrest.
- (c) may, when a warrant has been issued, or where the person in default fails to satisfy the magistrate that such default is due to inability to pay, order and adjudge such person to be imprisoned for a term not exceeding three months unless the sums of money payable under the order are sooner paid. 1927, c. 49, s. 5. By im-
prisonment.

5. An order for payment of money made under this Act may also be filed with the clerk of any division court and enforced by execution and by judgment summons as in the case of a judgment in the division court. 1927, c. 49, s. 6.

Filing of
order.

SCHEDULE.

THE PARENTS MAINTENANCE ACT.

SUMMONS.

(Referred to in section 2 (1).)

To.....

Of.....

City
District
County

} Of.....

Whereas an application has this day been made by.....
on behalf of.....
to the undersigned police magistrate, or justices
 of the peace for a summons under *The Parents Maintenance Act*.

These are, therefore, lawful to command you to appear before the
 undersigned, or such police magistrate or justices of the peace as
 may be then and there present in my, or our, stead at.....
on the.....day after the
 service thereof, at the hour of.....in the.....noon,
 to show cause why an order should not be made against you, to pay
 to the support of your.....such weekly sum not
 exceeding twenty dollars (\$20) as may be considered to be in accord-
 ance with your means and with the means of your said,.....
 and with the means of your said family, if any.

Given under.....hand }
 and seal this }
day of.....19 }

THE PARENTS MAINTENANCE ACT.

ORDER.

(Referred to in section 2 (1)).

To.....

Of.....

City }
District } Of.....
County }

Upon reading the summons dated the.....
day of.....19 , issued by.....
.....police magistrate for.....or justices of
the peace for.....upon the application of
.....under the provisions of *The Parents
Maintenance Act*, and upon hearing all the parties thereto, and the
evidence adduced, and it appearing that the said.....
.....is entitled to the protection and benefit
of the said Act;

I, or we, the undersigned, do hereby order that the said.....
.....does hereafter pay to his, or her.....
the sum of \$.....per week, or month, for his, or her, support, the
first payment to be made on the.....day of.....19....
together with the costs of these proceedings, which amount to
\$..... which shall be paid on or before the.....
day of.....19....

Given under.....hand }
and seal this }
.....day of.....19 }

1927, c. 49, Sched.

CHAPTER 186.

The Infants Act.

CUSTODY OF INFANTS.

Orders as to custody of and right of access to infant, at the instance of father or mother.

1.—(1) The Supreme Court or the surrogate court of the county or district in which the infant resides, upon the application of the father or of the mother of an infant, who may apply without a next friend, may make such order as the court sees fit regarding the custody of the infant and the right of access thereto of either parent, having regard to the welfare of the infant, and to the conduct of the parents, and to the wishes as well of the mother as of the father, and may alter, vary or discharge the order on the application of either parent, or, after the death of either parent, of any guardian appointed under this Act, and in every case may make such order respecting the costs of the mother and the liability of the father for the same, or otherwise, as the court may deem just.

Order as to maintenance.

(2) The court may also make an order for the maintenance of the infant by payment by the father, or out of any estate to which the infant is entitled, of such sum from time to time as, according to the pecuniary circumstances of the father or the value of the estate, the court deems reasonable. 1927, c. 50, s. 2.

Father and mother to be joint guardians.

2.—(1) Unless otherwise ordered by the court, and subject to the provisions of this Act, the father and mother of an infant shall be joint guardians and shall be equally entitled to the custody, control and education of such infant.

(2) Where the parents are not living together or where the parents are divorced or judicially separated, they may enter into a written agreement as to which parent shall have the custody, control and education of such infant, and in the event of the parents failing to agree either parent may apply to the court for its decision. 1927, c. 50, s. 3.

Rules of equity.

3. In questions relating to the custody and education of infants the rules of equity shall prevail. 1927, c. 50, s. 4.

INFANT'S REAL ESTATE.

4.—(1) Where an infant is seised, possessed of or entitled to any real estate in fee or for a term of years, or otherwise, and the Supreme Court is of opinion that a sale, mortgage, lease or other disposition of the same, or of a part thereof, or of any timber, not being ornamental, growing thereon, is necessary or proper for the maintenance or education of the infant, or that for any cause his interest requires or will be substantially promoted by such disposition, the court may order the sale, mortgage, or the letting for a term of years, or other disposition of such real estate, or any part thereof, to be made under the direction of the court or of one of its officers, or by the guardian of the infant, or by a person appointed for the purpose, in such manner and with such restrictions as may be deemed expedient, and may order the infant to convey the estate.

When sale or lease of infant's estate may be authorized.

(2) No sale, mortgage, lease, or other disposition shall be made contrary to the provisions of a will or conveyance by which the estate has been devised or granted to the infant or for his use.

Exception.

(3) The court, if it is of opinion that such course is for the benefit of the infant or that his interest requires it or will be substantially promoted thereby, may from time to time authorize the exchange of any lands held in fee or for a term of years or otherwise by such infant, and which are unproductive, for lands which are productive, but no such exchange of lands shall be made contrary to the provisions of a will or conveyance.

Authorizing exchange of unproductive for productive property.

(4) Every exchange of lands made pursuant to subsection 3 shall be conducted and confirmed in such manner as is required by the Rules and Practice of the Supreme Court in the case of the sale or other disposition of the lands of infants. 1927, c. 50, s. 5.

Procedure.

5. The Supreme Court may sanction the surrender of any lease to which an infant is entitled and if deemed expedient the acceptance of a new lease in lieu thereof. 1927, c. 50, s. 6.

Surrender of lease.

6. Where an infant is entitled to lands subject to a lease containing a covenant for renewal the Supreme Court may sanction the execution of a new lease in accordance with the provisions of the covenant or with such modification as may be deemed expedient. 1927, c. 50, s. 7.

Renewal of lease.

7. Every surrender and lease made or accepted by virtue of this Act shall be deemed to be as valid and effectual as if the person by whom or in whose place the same was made or accepted had been of full age and had made or accepted the same. 1927, c. 50, s. 8.

Validity of dispositions. Imp. Act, 11 Geo. IV, and 1 Wm. IV, c. 65, s. 31.

When a substitute may be appointed to convey.

Validity of such conveyance.

Consent to assignment of lease by infant.

Compensation to owners of particular estates.

Order for maintenance where power of appointment in favour of children.

8. Where it is deemed convenient the court may direct some other person to execute any conveyance, mortgage, lease or other document in the place of the infant and every such conveyance, mortgage, lease or other document whether executed by the infant or by such other person, shall be as effectual as if the infant had executed the same, and had been of the age of twenty-one years at the time. 1927, c. 50, s. 9.

9. Where an infant is seised of the reversion of land subject to a lease, and such lease contains a covenant not to assign or sublet without leave, the Supreme Court may, on behalf of the infant, consent to any assignment or transfer of such leasehold interest in the same manner and with the like effect as if the consent were given by a lessor under no such disability. 1927, c. 50, s. 10.

10. If any real estate of an infant is subject to dower, and the person entitled to dower consents in writing to accept in lieu of dower a gross sum which the court deems reasonable, or the permanent investment of a reasonable sum in such manner that the interest thereof be made payable to the person entitled to dower during her life, the court may direct the payment of such sum in gross out of the purchase money to the person entitled to dower, as upon the principles applicable to life annuities may be deemed a reasonable satisfaction for such dower; or may direct the payment to the person entitled to dower of an annual sum or of the income or interest to be derived from the purchase money, or any part thereof, as may seem just, and for that purpose may make such order for the investment or other disposition of the purchase money, or any part thereof, as may be necessary. 1927, c. 50, s. 11.

(As to conveyance by infants where land is sold by direction of the court for payment of debts of ancestor, see The Trustee Act, Rev. Stat. c. 150.)

11. Where, by a will or other instrument, property is given beneficially to any person for his life with a power of devising or appointing the same by will in favour of his children, or of one or more of them, the Supreme Court may, on the application, or with the consent of the tenant for life, order that such portion of the proceeds of the property, as it may deem proper, shall be applied towards the maintenance or education of any infant child in whose favour the power might be exercised, notwithstanding that there is a gift over in the event of there being no children to take under the power, or that there is a right conferred upon the tenant for life, or upon some other person in such event to make a disposition of the property in favour of some person other than such children. 1927, c. 50, s. 12.

12.—(1) The Supreme Court may order and direct the sale of any personal property of an infant including any stock or bonds to which he is entitled and may direct any money belonging to an infant and all or any part of the dividends in respect of such stock or bonds to be paid for the maintenance and education or otherwise for the benefit of the infant, and payment in accordance with the order of the court shall operate as full release and discharge from all liability with respect to the money paid, and any transfer of any stock or bonds so sold shall be made in such manner as the court may direct.

Order for application of dividends of stock for maintenance of infants.

Imp. Act.
11 Geo. IV
and 1 Wm.
IV, c. 65,
s. 32.

(2) The order shall be a full and complete indemnity and discharge to all banks, companies and societies and their officers and servants for all acts and things done, or permitted to be done, pursuant thereto. 1927, c. 50, s. 13.

Indemnity to banks, etc.

Imp. Act.
11 Geo. IV
and 1 Wm.
IV, c. 65,
s. 44.

MARRIAGE SETTLEMENTS OF INFANTS.

13.—(1) Every infant upon or in contemplation of his marriage, with the sanction of the Supreme Court, may make a valid and binding settlement or contract for a settlement of all or any part of his property, or property over which he has a power of appointment, whether real or personal and whether in possession, reversion, remainder or expectancy; and every conveyance, appointment and assignment of such property, or contract to make a conveyance, appointment or assignment thereof, executed by such infant with the approbation of the court for the purpose of giving effect to such settlement, shall be as valid and effectual as if the person executing the same were of the full age of twenty-one years.

Power of infant with the approbation of the court to make valid marriage settlement.

Imp. Act.
18 and 19
Vict., c. 43,
s. 1.

(2) This section shall not extend to a power which it is expressly declared shall not be exercised by an infant.

Exception.

(3) The court may also require that any person interested or appearing to be interested in the property shall be served with notice of the application. 1927, c. 50, s. 14.

Notice to persons interested.

Imp. Act.
18 and 19
Vict., c. 43,
s. 3.

14. Where an appointment, under a power of appointment, or a disentailing assurance has been executed by an infant tenant in tail, under the provisions of the next preceding section, and the infant afterwards dies under age such appointment or disentailing assurance shall thereupon become absolutely void. 1927, c. 50, s. 15.

If infant dies under age, appointment or disentailing deed to be void.

Imp. Act.
18 and 19
Vict., c. 43,
s. 2.

15. Nothing in the next two preceding sections shall apply to a male infant under the age of twenty years or to a female infant under the age of seventeen years. 1927, c. 50, s. 16.

Case of males under 20 or females under 17.

Imp. Act.
18 and 19
Vict., c. 43,
s. 4.

GUARDIANS.

Appoint-
ment of
guardians by
surrogate
court.

When
infant's con-
sent neces-
sary.

Where no
father or
authorized
guardian or
infant does
not consent.

Letters of
guardianship
to have
effect
throughout
Ontario.

Security
by the
guardian.

Rev. Stat.
cc. 230, 218.

Condition
of bond.

16.—(1) The surrogate court of the county or district in which the infant resides may appoint the father or mother of the infant, or may, with the consent of the father and the mother or of the surviving parent, appoint some other suitable person or persons to be the guardian or guardians of the infant, but if the infant is of the age of fourteen years no such appointment shall be made without his consent.

(2) If the infant has no parent living or any guardian authorized by law to take the care of his person and the charge of his estate, if any, or if he is of the age of fourteen years and does not give the consent mentioned in the next preceding subsection, upon the written application of the infant, or of any friend of the infant residing within the jurisdiction of the surrogate court to which the application is made, and after proof of twenty days' public notice of the application in some newspaper published within the county or district to the surrogate court of which the application is made, the court may appoint some suitable and discreet person or persons to be guardian or guardians of the infant, whether the infant is or is not entitled to any property.

(3) Letters of guardianship granted by a surrogate court shall have force and effect in all parts of Ontario; and an official certificate of the grant may be obtained as in the case of letters of administration. 1927, c. 50, s. 17.

17. Subject to the provisions of *The Guarantee Companies Securities Act* and of *The Companies Act* the court shall take from every guardian, appointed under section 16, a bond in the name of the infant, in such penal sum and with such sureties as the judge approves, conditioned that the guardian will faithfully perform his trust, and that he, or his executors or administrators will, when the infant becomes of the full age of twenty-one years, or whenever the guardianship is determined, or sooner if thereto required by law, render a true and just account of all goods, money, interest, rents, profits or other estate of the infant, which shall have come into the hands of the guardian, and will thereupon without delay deliver and pay over to the infant, or to his executors or administrators, the estate or the sum which may be in the hands of the guardian belonging to the infant, deducting therefrom and retaining a reasonable sum for the expenses and charges of the guardian; and the bond shall be recorded by the registrar of the court in the books of his office. 1927, c. 50, s. 18.

(As to appointment of trust company as guardian, see *The Loan and Trust Corporations Act*. Rev. Stat. c. 223.)

18.—(1) Testamentary guardians and guardians appointed or constituted by virtue of this Act shall be removable by the Supreme Court, or by the surrogate court for the same causes for which trustees are removable.

Removal of guardians.

(2) Any such guardian may, by leave of the court, resign his office upon such terms and conditions as may be deemed just. 1927, c. 50, s. 19.

Resignation of office by guardian.

19. A return of every appointment and removal or resignation of a guardian shall be made by the registrar of the court to the surrogate clerk in like manner as is required by *The Surrogate Courts Act* in the case of grants of probate or administration. 1927, c. 50, s. 20.

Returns respecting guardians to surrogate court.
Rev. Stat. c. 94.

AUTHORITY OF GUARDIANS.

20. Unless where the authority of a guardian appointed or constituted by virtue of this Act is otherwise limited the guardian so appointed or constituted during the continuance of his guardianship,—

Guardian's authority.

(a) shall have authority to act for and on behalf of the infant; and

To act for ward.

(b) shall have the charge and management of his estate, real and personal, and the custody of his person and the care of his education. 1927, c. 50, s. 21.

To manage real and personal estate, etc.

PRACTICE IN AND APPEALS FROM SURROGATE COURTS.

21. An appeal shall lie from an order or judgment of a surrogate court under this Act to a divisional court. 1927, c. 50, s. 22.

Appeal from order or judgment of surrogate court.

22. The practice and procedure under *The Surrogate Courts Act* and Rules shall apply to proceedings in the surrogate court under this Act, and the power to make rules under that Act shall apply to proceedings under this Act. 1927, c. 50, s. 23.

Practice and procedure.

Rev. Stat. c. 94.

GENERAL PROVISIONS.

23. Nothing in this Act shall deprive the Supreme Court of jurisdiction in matters provided for by this Act. 1927, c. 50, s. 24.

Jurisdiction of Supreme Court not affected.

24. Nothing in this Act shall change the law as to the authority of the father in respect of the religious faith in which his child is to be educated. 1927, c. 50, s. 25.

Religious education of infant.

CHAPTER 187.

The Legitimation Act.

Subsequent
marriage of
parents.

1. If the parents of any child heretofore or hereafter born out of lawful wedlock have heretofore intermarried or hereafter intermarry such child shall for all purposes be deemed to be and to have been legitimate from the time of birth. 1927, c. 52, s. 2.

Children
born out of
wedlock to
married
persons.

2. Notwithstanding the provisions of the preceding section, a child born while its father was married to another woman or while its mother was married to another man shall not inherit in competition with the lawful children of either parent. 1927, c. 52, s. 3.

Inheritance
from legiti-
matized
child.

3. The parents and brothers and sisters of any child legitimated by this Act shall inherit upon his death as though he had been legitimate. 1927, c. 52, s. 4.

Rights of
property
not
prejudiced.

4. Nothing in this Act shall affect any right, title or interest in or to property if such right, title or interest has been vested in any person,

(a) prior to the 1st day of July, 1921; or

(b) in the case of marriage after the 1st day of July, 1921, prior to such marriage. 1927, c. 52, s. 5.

Children of
innocent
second mar-
riage while
former
spouse
living.

5. When a second marriage has taken place in the *bona fide* belief of the death of a former spouse and under such circumstances that the crime of bigamy has not been committed, the issue of such marriage conceived before knowledge of the fact that the former spouse is living shall in the case of intestacy of the father or mother inherit the estate of the father or mother equally with lawful children. 1927, c. 52, s. 6.

CHAPTER 188.

The Children of Unmarried Parents Act.

PART I.

PRELIMINARY.

1. In this Act,—

Interpretation

- (a) “Judge” shall mean judge of the county or district court or police magistrate or judge of the juvenile court where such police magistrate or judge of the juvenile court has been designated by the Lieutenant-Governor in Council a judge within the meaning of this Act; “Judge.”
- (b) “Provincial Officer” shall mean an officer in the public service designated for that purpose by the Lieutenant-Governor in Council; “Provincial Officer.”
- (c) “Regulations” shall mean regulations made under the authority of this Act. 1927, c. 51, s. 2. “Regulations.”

Provincial Officer—Duties and Powers.

2.—(1) The Lieutenant-Governor in Council may appoint such officers, clerks and servants and may employ such other assistance as he may deem necessary for the administration and enforcement of this Act, and may designate any of such officers a provincial officer for the purposes of this Act. Appointment of officers, clerks, etc.

(2) Any officer appointed under this section may take and receive such affidavit or statutory declaration as any person desires to make in or concerning any matter arising out of the administration of this Act. 1927, c. 51, s. 3. Officers may take affidavits, etc.

3. The division registrar and the Deputy Registrar-General shall notify the provincial officer of the birth of every child born out of wedlock registered under *The Vital Statistics Act* and every birth registered under the said Act in such a manner as to suggest that the parents are unmarried or unknown, with such particulars as may be directed by the regulations. 1927, c. 51, s. 4. Provincial officer to be notified of registration of all births out of wedlock.
Rev. Stat. c 78.

Provincial officer to make investigations.

4. It shall be the duty of the provincial officer, by inquiry through children's aid societies and the returns furnished by the division registrar or Deputy Registrar-General, to obtain all information possible with respect to every child born out of wedlock, and the provincial officer shall take such proceedings and do all such things as are permitted or required under this Act as may seem to him advisable in the interest of such child. 1927, c. 51, s. 5.

Restrictions as to interference by provincial officer.

5. Nothing in this Act contained shall require the provincial officer to interfere with the care and maintenance of any child born out of wedlock,—

Rev. Stat. c. 189.

(a) where such child has been adopted according to the provisions of *The Adoption Act*; or

(b) where such child is being cared for voluntarily by a person or persons whom the provincial officer deems suitable to have the charge of such child. 1927, c. 51, s. 6.

Unmarried mother may apply to provincial officer for advice.

6. The mother of a child born out of wedlock or of a child who is likely to be born out of wedlock may apply to the provincial officer for advice and protection in any matter connected with such child or with the birth of such child, and the provincial officer shall take such action as may seem to him advisable in the interest of such mother and child. 1927, c. 51, s. 7.

Neglected child.

7. Where the father of a child born out of wedlock cannot be found or where adequate means of support cannot be provided by such father and the mother is dead, or is absent, or through lack of means is unable, or through misconduct is unfit to have the care of such child, the child may, with the consent of the provincial officer be dealt with as a "neglected child" within the meaning of *The Children's Protection Act*, and shall be maintained in accordance with the provisions of that Act. 1927, c. 51, s. 8.

Rev. Stat. c. 279.

Regulations.

8. The Lieutenant-Governor in Council may make regulations,—

(a) respecting the procedure to be followed upon an application for an order of affiliation;

(b) for fixing the fees, costs, charges and expenses payable on proceedings under this Act and for dispensing with the payment of such fees, costs, charges and expenses where owing to lack of means or any other reason the judge deems such action advisable;

- (c) for the payment of the expenses of the provincial officer in carrying out the provisions of this Act out of such sums as may be appropriated by the Legislature for that purpose;
- (d) for designating a provincial officer, and for the appointment of local and other assistants to the provincial officer, and for authorizing any such assistants to act for and in the place of the provincial officer;
- (e) generally for the better carrying out of the provisions of this Act. 1927, c. 51, s. 9.

PART II.

Affiliation Order.

9. An application to the judge for an affiliation order may be made,— Application to judge.

- (a) by the mother of a child born out of wedlock; or, Who may make application.
- (b) by an unmarried woman pregnant with a child; or,
- (c) by the next friend or guardian of a child born out of wedlock; or
- (d) by any person who has supplied medical attendance or nursing or hospital accommodation to an unmarried woman during pregnancy or confinement; or
- (e) by a person who has the custody of a child born out of wedlock or who has undertaken the care and education of such child or who has supplied such child with necessaries; or
- (f) by any person who has incurred the funeral expenses of an unmarried mother who has died in childbirth or in consequence of her pregnancy, or of a child born out of wedlock; or
- (g) by the provincial officer. 1927, c. 51, s. 10.

10. An affiliation order shall not be made under this Act unless the application therefor is made within the lifetime of the father, and Limit of time for application.

- (a) within one year after the birth of the child; or
- (b) within one year after the doing of any act on the part of the putative father which affords evidence of acknowledgment of paternity; or

(c) within one year after the return to Ontario of the putative father, where absent from Ontario at the expiration of the period of one year from the birth of the child;

(d) within one year from making default under any agreement authorized by this Act. 1927, c. 51, s. 11.

Appointment
for hearing.

11. The judge shall, upon application, appoint in writing a time and place at which he will inquire and determine whether the person said to be the father of the child is in fact the father of such child. 1927, c. 51, s. 12.

Service of
appointment.

12.—(1) Notice in writing of the time and place appointed shall be served personally or in such other manner as the judge may direct upon the person said to be the father of the child at least three days before the day so appointed.

Arrest of
alleged father
who may be
required to
give security
or be im-
prisoned.

(2) Where the judge is satisfied that there is good and probable cause for believing that the person said to be the father of the child is the father of the child and that such person, unless he be arrested is about to quit the territorial jurisdiction of the judge with the intention of avoiding service of the notice in writing referred to in subsection 1 or of evading his obligations in respect of the child and its mother, whether before or after an affiliation order has been made, the judge may issue a warrant for the arrest of such person and upon his arrest may require him to give security for such sum and in such manner and upon such condition as the judge shall direct and if such security is not given the judge may order such person to be imprisoned for any period not exceeding three months unless such security is sooner given, or such person has sooner complied with the condition so imposed. 1927, c. 51, s. 13.

Proceedings
in default of
appearance.

13. If at the time and place appointed the person so served fails to appear or show sufficient reason for not attending, the judge, in the absence of such person and upon sufficient evidence being adduced before him, may make such affiliation order or other order as he may deem just. 1927, c. 51, s. 14.

In case of
appearance.

14.—(1) Where the person so served appears in pursuance of such notice, the judge may hear and determine the matter in a summary manner and upon sufficient evidence being adduced before him may make an order declaring the person named therein to be the father of the child and requiring the father to pay to the provincial officer,—

Liability of
father—
extent of.

(a) the reasonable expenses for the maintenance and care, medical or otherwise, of the mother of such child during the three months next preceding the

birth of the child, at the birth, and during such period after the birth as may in the opinion of the judge have been or be necessary in connection with, or as a consequence of the birth of such child, taking into consideration the circumstances of the case;

(b) a sum of money weekly towards the maintenance of the child until the child attains the age of sixteen years, or a lump sum in lieu of such weekly payments which shall form a principal consuming annuity, the income from which shall be equivalent to the order for weekly maintenance by the court, the balance of which, in the event of the death of the child before the age of sixteen years, shall revert to the Province unless otherwise ordered by the court;

(c) the expenses of the burial of the mother in case of her death at or in consequence of her pregnancy, or of the birth of the child;

(d) the expenses of the burial of the child if he dies before the making of the affiliation order.

(2) In estimating the sums payable by the father under this section, the judge shall take into consideration the ability to provide, and the prospective means of such father. 1927, c. 51, s. 15.

Means of father to be considered.

15. The judge may in his discretion upon the same or a like application order that the mother of a child born out of wedlock shall contribute a weekly sum of money towards the maintenance of the child until such child reaches the age of sixteen years. 1927, c. 51, s. 16.

Liability of mother for maintenance of child.

16. The judge shall fix such sums for maintenance as shall enable the child to maintain a reasonable standard of life, and the judge shall be governed in his findings by the consideration of what the child would have enjoyed had he been born to his parents in lawful wedlock. 1927, c. 51, s. 17.

Amount of maintenance—how fixed.

17. The judge may re-open and reconsider any application for affiliation where fraud is shown or upon the discovery of new evidence and also may from time to time vary the affiliation order. 1927, c. 51, s. 18.

Reconsideration where fraud shown or new evidence.
Power to vary.

18.—(1) The judge may require security to be given for such sum and in such manner as he shall direct for the performance of any order made under the provisions of this Act, and where any person fails to give the security required of

Security and imprisonment for failure to give security.

him, the judge may order such person to be imprisoned for any period not exceeding three months unless such security is sooner given.

Forfeiture
of security.
Application
of proceeds.

(2) When any person has failed to perform a condition or comply with an order in respect of which security has been given, under section 12 or this section, the judge may order that such security be forfeited, which order of forfeiture may be enforced under the provisions of section 19, and the provincial officer shall apply the proceeds of such forfeited security in making any payments ordered to be made by the father, or in such other manner as the judge may direct. 1927, c. 51, s. 19.

Enforcement
of orders.

19.—(1) Any order made under the provisions of this Act, may be enforced in the same manner and by the like proceedings, as,—

As summary
convictions.

(a) any order made or fine imposed under the provisions of *The Summary Convictions Act*, save that imprisonment for default in making payment under such order shall only be ordered as hereinafter provided; or

Rev. Stat.
c. 121.

Or division
court judg-
ments.

(b) a judgment of the division court, where the order has been filed with the clerk of a division court, where-upon proceedings by way of execution or judgment summons, *inter alia*, may be used to enforce such order.

Provincial
officer to
apply to
judge to
enforce
payment.

(2) It shall be the duty of the provincial officer to see that payments directed to be made are duly made, and upon default in any such payment, the provincial officer may apply to any judge, who,—

By summons.

(a) may from time to time summon the person in default to explain the default; and

By warrant
to arrest.

(b) may, where service of the summons has been proved and the person summoned does not appear or sufficient reason for his absence is not given, or where it appears that the summons cannot be served, or where an order of imprisonment has been made, issue a warrant for the arrest of such person; and

By imprison-
ment.

(c) may, when a warrant has been issued or where the person in default fails to satisfy the magistrate that such default is due to inability to pay, order such person to be imprisoned for any period not exceeding three months unless the payments in respect of which he is in default are sooner paid.

As in division
court.

(3) Upon such default the provincial officer, where the order has been filed in the division court, may proceed as in the case of a judgment of that court. 1927, c. 51, s. 20.

20. No order of affiliation shall be made upon the evidence of the mother of the child unless her evidence is corroborated by some other material evidence. 1927, c. 51, s. 21.

Evidence.

21. All proceedings under this Act may be heard by the judge in his chambers and not in open court. 1927, c. 51, s. 22.

Proceedings may be heard by judge in chambers.

22. Notice shall be given to the provincial officer in all proceedings instituted under the authority of this Act, and he shall have the right to appear and intervene and be heard in person or by counsel on any such proceedings. 1927, c. 51, s. 23.

Notice to be given to provincial officer.

23. All payments ordered by the judge, shall be paid to the Public Trustee or, in the case of periodical payments, as the judge may direct. 1927, c. 51, s. 24.

Payments—where to be made.

24. The provincial officer shall not be debarred from instituting or continuing proceedings under this Act by the death of the mother. 1927, c. 51, s. 25.

Death of mother not a bar to proceedings.

25.—(1) Where an affiliation order has been made against the father of a child born or likely to be born out of wedlock, such order shall bind the estate of such father after his death and any sums payable thereunder shall be a debt due from and chargeable upon the estate of the father and recoverable at the suit of the provincial officer, but every affiliation order shall, as to any payment falling due before or after the father's death be subject to review as provided in section 17 and no action or other proceeding shall be taken thereon after the death of the father without the leave of the judge, and the judge, before granting such leave shall direct that notice shall be given to the widow and legitimate children of the father and to all other persons interested in the estate.

Affiliation order shall bind estate of father.

(2) Where it appears to the judge that the terms of the affiliation order cannot be carried out without depriving the widow or legitimate children of the father of necessary maintenance, he shall vary the affiliation order to such an extent and in such manner that the widow of the father and his children born in wedlock, if any, shall be duly provided for before the child or children born out of wedlock. 1927, c. 51, s. 26.

Wife and children born in wedlock not to be prejudiced.

26.—(1) Any agreement between the mother and the putative father of a child born or likely to be born out of wedlock and any agreement entered into between such father and any other person relating to any matters coming within the provisions of this Act with regard to the maintenance and support of such mother or child, shall require the approval in writing of the judge, and a copy of every such agreement shall be recorded with the provincial officer.

Agreement between putative father and mother of child as to maintenance of child requires approval in writing of provincial officer.

Agreement
voidable—
under what
circumstances.

(2) Any agreement coming within subsection 1 of this section, entered into without the approval of the judge, shall be voidable at the instance of the provincial officer.

Payments—
how to be
made.

(3) All money payable under any such agreement shall be paid to the Public Trustee, save in the case of periodical payments which shall be made as the judge may direct. 1927, c. 51, s. 27.

Agreement
with pro-
vincial officer
to pay
expenses.

27.—(1) The provincial officer may enter into an agreement with any person, whereby such person agrees to pay such of the expenses set forth in section 14 as, in the opinion of the provincial officer, have been or may be necessary.

Default under
agreement.

(2) Upon default in payment under any such agreement the provincial officer may apply to the judge for an affiliation order, and such agreement when made by the person said to be the father of the child shall be *prima facie* proof of paternity. 1927, c. 51, s. 28.

Power of
judge to di-
rect payment
of costs.

28. The judge shall have power to direct payment of the costs of any proceedings taken before him under this Act. 1927, c. 51, s. 29.

Appeal.

29. An appeal shall lie from any order under this Act to the Appellate Division by leave of a judge of the Supreme Court. 1927, c. 51, s. 30.

CHAPTER 189.

The Adoption Act.

1.—(1) Upon an application in the prescribed manner by any person desirous of being authorized to adopt an infant under the age of twenty-one years, who has never been married, or to adopt any other person where the Attorney-General has in writing consented to such application being made, the court may, subject to the provisions of this Act, make an order (in this Act referred to as an “adoption order”) authorizing the applicant to adopt that infant or other person as the case may be.

Application
for order.

(2) Hereafter in this Act an infant or other person so sought to be adopted, a person so authorized to adopt an infant or other person, and the infant or other person authorized to be adopted are referred to as an “infant” and “adoption parent” and an “adopted child” respectively.

“Infant,”
“Adoption
parent,”
“Adopted
child.”

(3) Where an application for an adoption order is made by a husband and wife jointly, the court may make the order authorizing them jointly to adopt, but save as aforesaid no adoption order shall be made authorizing more than one person to adopt an infant. 1927, c. 53, s. 2.

Joint
application.

2.—(1) An adoption order shall not be made in any case where,—

When order
not to be
made.

(a) the applicant is under the age of twenty-five years;
or

(b) the applicant is less than twenty-one years older than the infant in respect of whom the application is made.

Provided, that where the applicant and the infant are within the prohibited degrees of consanguinity, it shall be lawful for the court, if it thinks fit, to make the order notwithstanding that the applicant is less than twenty-one years older than the infant.

Proviso.

(2) An adoption order shall not be made in any case where the sole applicant is a male and the infant in respect of whom the application is made is a female unless the court is satisfied that there are special circumstances which justify as an exceptional measure the making of an adoption order.

Special cir-
cumstances.

Consent
required.

(3) An adoption order shall not be made except with the consent of every person or body who is a parent or guardian of the infant in respect of whom the application is made or who has the actual custody of the infant or who is liable to contribute to the support of the infant: Provided that the court may dispense with any consent required by this subsection if satisfied that the person whose consent is to be dispensed with has abandoned or deserted the infant or cannot be found or is incapable of giving such consent or, being a person liable to contribute to the support of the infant, either has persistently neglected or refused to contribute to such support or is a person whose consent ought, in the opinion of the court and in all the circumstances of the case, to be dispensed with, but no order dispensing with the consent of any person shall be made without notice to him, unless it is made to appear that after reasonable diligence he cannot be found.

Proviso.

Notice to
provincial
officer.

(4) An adoption order shall not be made without notice to the provincial officer or in lieu of notice, his consent to the order.

No order
without con-
sent of hus-
band or wife
of adopting
parent.

(5) An adoption order shall not be made upon the application of a husband or wife without the consent of the wife or husband as the case may be: Provided that the court may dispense with any consent required by this subsection if satisfied that the person whose consent is to be dispensed with cannot be found, or is incapable of giving such consent or that the husband and wife have separated and are living apart and that the separation is likely to be permanent.

Proviso.

Applicant to
be resi-
dent and
domiciled in
Ontario.

(6) An adoption order shall not be made in favour of any applicant who is not resident and domiciled in Ontario, or in respect of any infant who is not a British subject and resident within Ontario. 1927, c. 53, s. 3.

Conditions
precedent to
granting of
order.

3. The court before making an adoption order shall be satisfied that,—

Consent.

(a) every person whose consent is necessary under this Act and whose consent is not dispensed with has consented to and understands the nature and effect of the adoption order for which application is made, and in particular in the case of any parent, understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights; and

Welfare
of infant.

(b) the order if made will be for the welfare of the infant, due consideration being for this purpose given to the wishes of the infant, having regard to the age and understanding of the infant; and

- (c) the applicant has not received or agreed to receive, and that no person has made or given, or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption except such as the court may sanction. 1927, c. 53, s. 4. No payment to applicant.

4. The court in an adoption order may impose such terms and conditions as the court may think fit and in particular may require the adopting parent by bond or otherwise to make for the adopted child such provision (if any) as in the opinion of the court is just and expedient. 1927, c. 53, s. 5. Terms and conditions.

5.—(1) Upon an adoption order being made, the child shall, unless the adopting order otherwise provides, assume the surname of the adopting parent and all rights, duties, obligations and liabilities of the parent or parents, guardian or guardians of the adopted child, in relation to the future custody, maintenance and education of the adopted child, including all rights to appoint a guardian or to consent or give notice of dissent to marriage shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the adopting parent as though the adopted child was a child born to the adopting parent in lawful wedlock, and in respect of the same matters and in respect of the liability of a child to maintain its parents the adopted child shall stand to the adopting parent in the position of a child born to the adopting parent in lawful wedlock; Provided that, in any case where a husband and wife are the adopting parents, they shall in respect of the matters aforesaid and for the purpose of the jurisdiction of any court to make orders as to the custody and maintenance of and right of access to children stand to each other and to the adopted child in the same relation as they would have stood if they had been the lawful father and mother of the adopted child, and the adopted child shall stand to them respectively in the same relation as a child would have stood to a lawful father and mother respectively. Use of name of adopting parent and rights. Proviso.

(2) An adoption order shall not deprive the adopted child of any right to or interest in property to which, but for the order, the child would have been entitled under any intestacy or disposition, whether occurring or made before or after the making of the adoption order, but shall confer on the adopted child upon the intestacy of the adopting parent, the same rights to and interests in the property of the adopting parent as a child born in lawful wedlock of the adopting parent, and the expressions "child," "children" and "issue" where used in any disposition made after the making of an adoption order by the adopting parent, shall, unless the contrary intention appears, include an adopted child or children or the issue of an adopted child. Rights to and interest in property.

Inheritance
from
adopting
parent.

(3) Where an adopted child or the spouse or issue of an adopted child takes any interest in real or personal property under a disposition by the adopting parent, or where an adopting parent takes any interest in real or personal property under a disposition by an adopted child or the spouse or issue of an adopted child, any succession, legacy or other duty which becomes leviable in respect thereof shall be payable at the same rate as if the adopted child had been a child born to the adopting parent in lawful wedlock.

"Dis-
position."

(4) For the purposes of this section, "disposition" means an assurance of any interest in property by any instrument whether *inter vivos* or by will, including codicil.

Insurance
rights.

(5) For the purposes of the enactments relating to fatal accidents and to insurance and to friendly societies, the adopting parent shall be deemed to be the parent of the child; and where before the adoption order was made any insurance has been effected by the natural parent of the child, its rights under the policy shall, notwithstanding the adoption order, remain as though no such order had been made.

Not to be
deemed child
of adopting
parent ex-
cept for speci-
fied purposes.

(6) Save as herein provided and as to persons other than the adopting parent, the adopted child shall not be deemed the child of the adopting parent.

Disposition
of property
where child
dies intestate.

(7) If the adopted child dies intestate, his property acquired by himself or by gift or inheritance from his adopting parent or from the kindred of such parent shall be distributed as though he had been born in lawful wedlock to his adopting parent and property acquired from his natural parent or kindred shall descend as if no adoption order had been made.

Legitimation
not to affect
adoption
order.

(8) An adoption order made with respect to an illegitimate child shall not in any way be affected by the intermarriage of its parents. 1927, c. 53, s. 6.

Interim
order.

6.—(1) Upon any application for an adoption order, the court may postpone the determination of the application and may make an interim order (which shall not be an adoption order for the purposes of this Act) giving the custody of the infant to the applicant for a period not exceeding two years by way of a probationary period upon such terms as regards provision for the maintenance and education and supervision of the welfare of the infant and otherwise as the court may think fit.

Consent.

(2) All such consents as are required to an adoption order shall be necessary to an interim order but subject to a like power on the part of the court to dispense with any such consent. 1927, c. 53, s. 7.

7. An adoption order or an interim order may be made in respect of an infant who has already been the subject of an adoption order, and, upon any application for such further adoption order, the adopting parent under the adoption order last previously made shall, if living, be deemed to be the parent of the infant for all the purposes of this Act. 1927, c. 53, s. 8. Effect of order on previous adoption.

8.—(1) The court having jurisdiction to make adoption orders under this Act, shall be the Supreme Court, or, at the option of the applicant, but subject to any rules under this section, the judge of the county court or of a juvenile court when the judge of the juvenile court has been designated by the Lieutenant-Governor in Council as a “judge” within the meaning of this Act, within whose jurisdiction either the applicant or the infant resides at the date of the application for the adoption order. Who to make order.

(2) Rules in regard to any matter to be prescribed under this Act and directing the manner in which applications to the court are to be made, and dealing generally with all matters of procedure and incidental matters arising out of this Act, and for carrying this Act into effect may be made by the Lieutenant-Governor in Council. Rules and regulations.

(3) An application for an adoption order may be heard and determined in chambers, and if the child was born out of wedlock this fact shall not appear upon the face of the adoption order. The papers used upon an adoption application shall be sealed up and shall not be open for inspection save upon the direction of a judge or the provincial officer. Application to be heard in chambers.

(4) For the purpose of any application under this Act and subject to any rules under this section, the court may appoint some person to act as guardian *ad litem* of the infant upon the hearing of the application with the duty of safeguarding the interests of the infant before the court, and may direct the applicant to pay the costs of the person so appointed. 1927, c. 53, s. 9. Guardian ad litem.

9. It shall not be lawful for any applicant or for any parent or guardian, except with the sanction of the court, to receive any payment or other reward in consideration of the adoption of any infant under this Act or for any person to make or give or agree to make or give to any applicant or to any parent or guardian any such payment or reward. 1927, c. 53, s. 10. Payment or reward unlawful. Exception.

10. Where at the date of the commencement of this Act any infant is in the custody of, and being brought up, maintained and educated by any person or a husband and wife jointly as his, her or their own child under any *de facto* adoption, the court may, upon the application of such person or husband and wife, and notwithstanding the provisions of this Adoption order where consent of parent or guardian not required.

Act, make an adoption order authorizing him, her or them to adopt the infant without requiring the consent of any parent or guardian of the infant to be obtained, upon being satisfied that in all the circumstances of the case it is just and equitable and for the welfare of the infant that no such consent should be required and that an adoption order should be made. 1927, c. 53, s. 11.

Trans-
mission of
copy of
order to
Registrar-
General.
Rev. Stat.
c. 78.

11.—(1) The proper officer of the court shall transmit a copy of every adoption order to the Registrar-General, under *The Vital Statistics Act*, within ten days of its making.

"Adopted
children
register."

(2) The Registrar-General shall establish and maintain a register to be called the "Adopted Children Register," in which shall be recorded all adoption orders.

Reference
in Birth
Register.

(3) The Registrar-General shall cause the birth entry or entries in the register of birth of the child adopted, to be marked with the word "Adopted" with a reference to the adoption register, and shall also cause to be included in the entry in the adoption register recording the adoption, a reference to the registration of the birth of the adopted child. 1927, c. 53, s. 12.

Rights of
adopted non-
resident as
to succe-
sion in
Ontario.

12. A person domiciled in any other province of the Dominion of Canada who has been adopted in accordance with the laws of the province where he is domiciled, shall be entitled to the same rights of succession as to property in Ontario as he would have had in the province in which he was adopted but not exceeding the right he would have had if adopted under this Act. 1927, c. 53, s. 13.

"Provincial
Officer."

13. The Lieutenant-Governor in Council may appoint an officer in the public service to be known as "The Provincial Officer" for the purposes of this Act. 1927, c. 53, s. 14.

Application
of Act to
1921, c. 55.

14. The property and rights of all children adopted under the Act, 11 George V, chapter 55, shall be governed by the provisions of this Act. 1927, c. 53, s. 15.

3. LANDLORD AND TENANT.

CHAPTER 190.

The Landlord and Tenant Act.

INTERPRETATION.

1. In this Act,

Interpreta-
tion.

- (a) "Crops" shall mean and include all sorts of grain, grass, hay, hops, fruits, pulse and other products of the soil; "Crops."
- (b) "Landlord" shall mean and include lessor, owner, the person giving or permitting the occupation of the premises in question and his and their heirs and assigns and legal representatives, and in Parts II and III shall also include the person entitled to the possession of the premises; "Landlord."
- (c) "Standing crops" shall mean crops standing or growing on the demised premises; "Standing crops."
- (d) "Tenant" shall mean and include lessee, occupant, sub-tenant, under-tenant, and his or their assigns and legal representatives. R.S.O. 1914, c. 155, s. 2. "Tenant."

PART I.

RELATION OF LANDLORD AND TENANT.

2. The relation of landlord and tenant shall not depend on tenure, and a reversion in the lessor shall not be necessary in order to create the relation of landlord and tenant, or to make applicable the incidents by law belonging to that relation; nor shall it be necessary in order to give a landlord the right of distress that there shall be an agreement for that purpose between the parties. R.S.O. 1914, c. 155, s. 3. Relation of landlord and tenant.

COVENANTS RUNNING WITH REVERSION, ETC.

3. All person being grantees or assignees of the King, or of any other person than the King, and the heirs, executors, successors and assigns of every of them, shall have and enjoy like advantage against the lessees, their executors, administrators, and assigns, by entry for non-payment of the rent, or for doing Remedies available to assignees of reversion.

of waste, or other forfeiture, and also shall have and enjoy all and every such like and the same advantage, benefit, and remedies, by action only, for not performing of other conditions, covenants, or agreements, contained and expressed in the indentures of their said leases, demises or grants against all and every of the said lessees and grantees, their executors, administrators, and assigns as the said lessors or grantors themselves, or their heirs or successors, might have had and enjoyed at any time or times. R.S.O. 1914, c. 155, s. 4, *part*.

32 Hen.
VIII. c. 34,
s. 1.

Lessee's cov-
enant to run
with rever-
sion.

Imp. Act
44-45 V.
c. 41, s. 10.

4. Rent reserved by a lease and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained shall be annexed and incident to and shall go with the reversionary estate in the land or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and shall be capable of being recovered, received, enforced and taken advantage of by any person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased. R.S.O. 1914, c. 155, s. 5.

Grantee of
reversion
may enforce
covenants.

5. The benefit of every condition of re-entry or forfeiture for a breach of any covenant or condition contained in a lease, shall extend to and be enforced and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased, although that person became, by conveyance or otherwise, so entitled after the condition of re-entry or forfeiture had become enforceable.

Action of
covenant, etc.,
against
assigns of
grantors and
lessors.

32 Hen.
VIII. c. 34,
s. 2.

6. All lessees and grantees of lands, tenements, rents, portions, or any other hereditaments for term of years, life or lives, their executors, administrators, and assigns shall and may have like action, advantage, and remedy against all and every person who shall have any gift or grant of the King, or of any other persons, of the reversion of the same lands, tenements and other hereditaments so let, or any parcel thereof, for any condition, covenant, or agreement, contained or expressed in the indentures of their leases as the same lessees or any of them, might and should have had against their said lessors, and grantors, their heirs, or successors. R.S.O. 1914, c. 155, s. 6, *part*.

Lessor's cov-
enants to run
with rever-
sion.

Imp. Act
44-45 V.
c. 41, s. 11.

7. The obligation of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance

of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise; and, if and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, such obligation may be taken advantage of and enforced against any person so entitled. R.S.O. 1914, c. 155, s. 7.

APPORTIONMENT OF CONDITION OF RE-ENTRY.

8. Notwithstanding the severance by conveyance, surrender or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in any land which has not been surrendered, or as to which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease. R.S.O. 1914, c. 155, s. 8.

Apportionment of conditions on severance, etc.

Imp. Act, 44-45 V. c. 41, s. 12.

SUB-LESSEE NOT TO HAVE RIGHT TO CALL FOR TITLE.

9.—(1) On a contract to grant a lease for a term of years to be derived out of a leasehold interest, with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion.

On sub-demise title to leasehold reversion not to be required.

(2) This section applies only if and as far as the contrary intention is not expressed in the contract, and shall have effect subject to the terms of the contract and to the provisions therein contained. R.S.O. 1914, c. 155, s. 10 (1, 2).

Saving.

Imp. Act, 44-45 Vic. c. 41, s. 13.

DEFECTS IN LEASES MADE UNDER POWERS OF LEASING.

10. Where, in the intended exercise of any power of leasing, whether derived under a statute or under any instrument lawfully creating such power, a lease has been, or shall hereafter be granted which is, by reason of the non-observance or omission of some condition or restriction or by reason of any other deviation from the terms of such power, invalid as against the person entitled, after the determination of the interest of the person granting such lease, to the reversion, or against other the person who, subject to any lease lawfully granted under such power, would have been entitled to the land comprised in such lease, such lease, in case the same was made in good faith and the lessee named therein, his heirs, exe-

Effect of lease where there is a deviation from terms of the power to demise.

Imp. Act, 12-13 V. c. 26, s. 2.

cutors, administrators, or assigns have entered thereunder, shall be considered a contract for a grant at the request of the lessee, his heirs, executors, administrators, or assigns of a valid lease under such power, to the like purport and effect as such invalid lease, save so far as any variation may be necessary in order to comply with the terms of such power; and all persons who would have been bound by a lease lawfully granted under such power shall be bound by such contract; but no lessee under any such invalid lease, his heirs, executors, administrators, or assigns, shall be entitled by virtue of any such contract to obtain any variation of such lease, where the persons who would have been bound by such contract are willing to confirm such lease without variation. R.S.O. 1914, c. 155, s. 11.

Proviso where the grantor or reversioner is willing to confirm.

What may be deemed a confirmation of invalid lease.

Imp. Act,
13-14 V.
c. 17, s. 2.

11. Where, upon or before the acceptance of rent under any such invalid lease, any receipt, memorandum or note in writing confirming such lease is signed by the person accepting such rent, or some other person by him thereunto lawfully authorized, such acceptance shall, as against the person so accepting such rent, be deemed a confirmation of such lease. R.S.O. 1914, c. 155, s. 12.

Duty of lessee to accept confirmation.

Imp. Act,
13-14 V.
c. 17, s. 3.

12. Where, during the continuance of the possession taken under any such invalid lease, the person, for the time being entitled, subject to such possession, to the land comprised in such lease, or to the possession or the receipt of the rents and profits thereof, is able to confirm such lease without variation the lessee, his heirs, executors, or administrators, or any person who would have been bound by the lease if the same had been valid, upon the request of the person so able to confirm the same, shall be bound to accept a confirmation accordingly; and such confirmation may be by memorandum or note in writing signed by the persons confirming and accepting, or by some other persons by them thereunto lawfully authorized; and, after confirmation and acceptance of confirmation, such lease shall be valid and shall be deemed to have had from the granting thereof the same effect as if the same had been originally valid. R.S.O. 1914, c. 155, s. 13.

Effect of invalid leases if grantor continues in ownership until he might lawfully grant the lease.

Imp. Act,
12-13 V.
c. 26, s. 4.

13. Where a lease granted in the intended exercise of any power of leasing is invalid by reason that, at the time of the granting thereof, the person granting the same could not lawfully grant such lease, but the estate of such person in the land comprised in such lease has continued after the time when such, or the like lease, might have been granted by him in the lawful exercise of such power, such lease shall take effect and be as valid as if the same had been granted at such last mentioned time, and all the provisions of sections 10 to 15 shall apply to every such lease. R.S.O. 1914, c. 155, s. 14.

14. Where a valid power of leasing is vested in, or may be exercised by, a person granting a lease, and, by reason of the determination of the estate or interest of such person or otherwise, such lease cannot have effect and continuance according to the terms thereof independently of such power such lease shall, for the purposes of the next preceding four sections, be deemed to be granted in the intended exercise of such power although such power is not referred to in such lease. R.S.O. 1914, c. 155, s. 15.

What shall be deemed an intended exercise of a power.

Imp. Act, 12-13 V. c. 26, s. 5.

15. Nothing in sections 10 to 15 shall extend to, prejudice or take away any right of action, or other right or remedy to which, but for the next preceding five sections, the lessee named in any such lease, his heirs, executors, administrators, or assigns would or might have been entitled under or by virtue of any covenant for title or quiet enjoyment contained in such lease on the part of the person granting the same, or prejudice, or take away, any right of re-entry, or other right or remedy to which, but for such sections, the person granting such lease, his heirs, executors, administrators, or assigns, or other person, for the time being entitled to the reversion expectant on the determination of such lease, would or might have been entitled for or by reason of any breach of the covenants, conditions, or provisos contained in such lease, and on the part of the lessee, his heirs, executors, administrators, or assigns to be observed and performed. R.S.O. 1914, c. 155, s. 16.

Saving the rights of the lessees under covenants for title and for quiet enjoyment, and the lessor's right of re-entry for breach of covenant, etc.

Imp. Act, 12-13 V. c. 26, s. 6.

MERGER, ETC., OF REVERSIONS.

16. Where the reversion expectant on a lease of land merges or is surrendered, the estate which for the time being confers as against the tenant under the lease the next vested right to the land shall, to the extent of and for preserving such incidents to and obligations on the reversion as but for the surrender or merger thereof would have subsisted, be deemed the reversion expectant on the lease. R.S.O. 1914, c. 155, s. 18.

Effect of surrender or merger of reversion expectant on a lease in certain cases.

See Imp. Act, 8 and 9 V. c. 106, s. 9.

RIGHT OF RE-ENTRY.

17.—(1) In every demise, whether by parol or in writing and whenever made, unless it is otherwise agreed, there shall be deemed to be included an agreement that if the rent reserved, or any part thereof, shall remain unpaid for fifteen days after any of the days on which the same ought to have been paid, although no formal demand thereof shall have been made, it shall be lawful for the landlord at any time thereafter, into and upon the demised premises, or any part thereof in the name of the whole, to re-enter and the same to have again, re-possess and enjoy as of his former estate.

Right of re-entry on non-payment of rent.

Implied agree-
ment for re-
entry on con-
viction of
tenant for
keeping
disorderly
house.
R.S.O. c. 146.

(2) In every such demise as aforesaid there shall be deemed to be included an agreement that if the tenant or any other person shall be convicted of keeping a disorderly house, within the meaning of *The Criminal Code*, on the demised premises, or any part thereof, it shall be lawful for the landlord at any time thereafter, into the demised premises, or any part thereof, to re-enter and the same to have again, re-possess and enjoy as of his former estate. R.S.O. 1914, c. 155, s. 19.

FORFEITURE OF LEASES.

Interpreta-
tion.

18.—(1) In this section and the next following four sections,

"Action."

(a) "Action" shall include any proceedings under Part III;

"Lease."

Imp. Act,
44-45 V. c. 41.
s. 14, and
55-56 V.
c. 13, s. 5.

(b) "Lease" shall include an original or derivative under-lease and a grant at a fee farm rent or securing a rent by condition and an agreement for a lease where a lessee has become entitled to have his lease granted;

"Lessee."

(c) "Lessee" shall include an original or derivative under-lessee and the heirs, executors, administrators and assigns of a lessee and a grantee under such a grant and his heirs and assigns;

"Lessor."

(d) "Lessor" shall include an original derivative under-lessor and the heirs, executors, administrators and assigns of a lessor and a grantor under such a grant and his heirs and assigns;

"Mining
lease."

Imp. Act,
44-45 V.
c. 41, s. 2 (xi.)

(e) "Mining Lease" shall mean a lease for mining purposes, that is a searching for, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away or disposing of mines or minerals, and substances in, on or under the land, obtainable by underground or by surface working or purposes connected therewith and shall include a grant or license for mining purposes;

"Underlease."

(f) "Under-lease" shall include an agreement for an under-lease where the under-lessee has become entitled to have his under-lease granted;

"Under-
lessee."

(g) "Under-lessee" shall include any person deriving title under or from an under-lessee. R.S.O. 1914, c. 155, s. 20 (1), *part*.

Restrictions
on and relief
against for-
feiture of
leases.
Imp. Act,
44-45 V. c. 41,
s. 14 (1),
55-56 V.
c. 13, s. 5.

(2) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant or condition in the lease other than a proviso in respect of the payment of rent, shall not be enforceable, by action, entry, or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of, and

if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money to the satisfaction of the lessor for the breach. R.S.O. 1914, c. 155, s. 20 (2), *part*.

19.—(1) Where a lessor is proceeding by action or otherwise to enforce any right of re-entry or forfeiture, whether for non-payment of rent or for other cause, the lessee may, in the lessor's action, if any, or if there is no such action pending, then in an action or summary application to a Judge of the Supreme Court brought by himself, apply to the Court for relief; and the Court may grant such relief, as having regard to the proceedings and conduct of the parties under the provisions of the preceding section and to all the other circumstances the Court thinks fit, and on such terms as to payment of rent, costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future as the Court may deem just. R.S.O. 1914, c. 155, s. 20 (3), *part*. Relief against forfeiture.

(2) This section and section 18 shall apply, although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease, in pursuance of the directions of a statute. Where right of entry is under a statute.

(3) For the purposes of this section a lease limited to continue as long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach. Lease until breach.

(4) Where the action is brought to enforce a right of re-entry or forfeiture for non-payment of rent and the lessee, at any time before judgment, pays into court all the rent in arrear and the costs of the action the proceedings in the action shall be forever stayed. When proceedings may be stayed.

(5) Where relief is granted under the provisions of this section the lessee shall hold and enjoy the demised premises according to the lease thereof made without any new lease. Position of lessee.

(6) This section shall apply to leases made either before or after the commencement of this Act and shall apply notwithstanding any stipulation to the contrary. Application of section.

(7) This section shall not extend,—

- (a) to a covenant or condition against the assigning, under-letting, parting with the possession, or disposing of the land leased; or to a condition for forfeiture on the bankruptcy of the lessee, or on the lessee making an assignment for the benefit of creditors under *The Assignments and Preferences* Exceptions. Generally. Rev. Stat. c. 162.

Act, or on the taking in execution of the lessee's interest; or

Mining leases.

(b) in the case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing machines or other things, or to enter or inspect the mine or the workings thereof.

Condition for relief for non-insurance.

(8) Where the right of re-entry or forfeiture is in respect of a breach of a covenant or condition to insure, relief shall not be granted if at the time of the application for relief there is not an insurance on foot in conformity with the covenant or condition to insure except, in addition to any other terms which the Court may impose, upon the term that the insurance is affected. R.S.O. 1914, c. 155, s. 20 (4-10).

LEASES, UNDER-LEASES, FORFEITURE.

Protection of under-lessees on forfeiture of superior lease.

55-56 V.
(Imp.) c. 13,
s. 4.

20. Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso, or stipulation in a lease, the Court, on application by any person claiming as under-lessee any estate or interest in the property comprised in the lease or any part thereof, either in the lessor's action, if any, or in any action or summary application to a judge of the Supreme Court brought by such person for that purpose, may make an order vesting for the whole term of the lease or any less term the property comprised in the lease, or any part thereof, in any person entitled as under-lessee to any estate or interest in such property upon such conditions, as to execution of any deed or other document, payment of rents, costs, expenses, damages, compensation, giving security or otherwise, as the Court in the circumstances of each case shall think fit; but in no case shall any such under-lessee be entitled to require a lease to be granted to him for any longer term than he had under his original sub-lease. R.S.O. 1914, c. 155, s. 21, *part*.

Who must be parties to an action to enforce right of re-entry or forfeiture.

21. Where a lessor is proceeding by action to enforce a right of re-entry or forfeiture under any covenant, proviso or stipulation in a lease, every person claiming any right, title or interest in the demised premises under the lease, if it be known to the lessor that he claims such right or interest or if the instrument under which he claims is registered in the proper registry or land titles office, shall be made a party to the action. R.S.O. 1914, c. 155, s. 22.

License to assign not to be unreasonably withheld.

22.—(1) In every lease made after the 1st day of September, 1911, containing a covenant, condition or agreement against assigning, underletting, or parting with the possession, or disposing of the land or property leased without license or consent, such covenant, condition or agreement shall, unless the

lease contains an expressed provision to the contrary, be deemed to be subject to a proviso to the effect that such license or consent shall not be unreasonably withheld. R.S.O. 1914, c. 155, s. 23, *part*.

(2) Where the landlord refuses or neglects to give a license or consent to an assignment or sub-lease a judge of the county or district court, upon the application of the tenant or of the assignee or sub-tenant, made by way of originating notice according to the practice of the court, may make an order determining whether or not the license or consent is unreasonably withheld, and where the judge is of opinion that the license or consent is unreasonably withheld permitting the assignment or sub-lease to be made, and such order shall be the equivalent of the license or consent of the landlord within the meaning of any covenant or condition requiring the same and such assignment or sub-lease shall not be a breach thereof. 1925, c. 47, s. 2.

Application to court where consent to assignment or sub-letting withheld.

LICENSES.

23. Where a license to do any act which, without such license, would create a forfeiture, or give a right to re-enter under a condition or power reserved in a lease, is given to a lessee or his assigns, every such license shall, unless otherwise expressed, extend only to the permission actually given, or to any specific breach of any proviso or covenant, or to the actual assignment, under-lease or other matter thereby specifically authorized to be done, but shall not prevent a proceeding for any subsequent breach unless otherwise specified in such license; and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force and virtue, and shall be available as against any subsequent breach of covenant or condition, assignment, under-lease, or other matter not specifically authorized or made punishable by such license, in the same manner as if no such license had been given; and the condition or right of re-entry shall be and remain in all respects as if such license had not been given, except in respect of the particular matter authorized to be done. R.S.O. 1914, c. 155, s. 24.

Restriction of effect of license under power contained in lease, etc.,

Imp. Act, 22-23 V. c. 35, s.1.

24. Where in a lease there is a power or condition of re-entry on assigning or underletting or doing any other specified act without license, and a license has been or is given to one of several lessees or co-owners to assign or underlet his share or interest, or to do any other act prohibited to be done without license, or has been or is given to a lessee or owner, or any one of several lessees or owners, to assign or underlet part only of the property, or to do any other such act in respect of part only of such property, such license shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by the co-lessee or

Restricted operation of partial licenses.

Imp. Act, 22-23 V. c. 35, s. 2.

co-lessees or owner or owners of the other shares or interest in the property, or by the lessee or owner of the rest of the property, over or in respect of such shares or interest or remaining property, but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such license. R.S.O. 1914, c. 155, s. 25.

WAIVER OF COVENANT.

Restriction of effect of waiver of covenant.

Imp. Act, 23-24 V. c. 88, s. 6.

25. Where an actual waiver of the benefit of a covenant or condition in a lease, on the part of a lessor or his heirs, executors, administrators or assigns, is proved to have taken place in any one particular instance such actual waiver shall not be assumed or deemed to extend to any instance or any breach of covenant or condition other than that to which such waiver specially relates, nor to be a general waiver of the benefit of any such covenant or condition unless an intention to that effect appears. R.S.O. 1914, c. 155, s. 26.

COVENANT TO PAY TAXES.

Covenant to pay taxes not to include taxes for local improvements.

Effect of altering form of covenant.

Rev. Stat. c. 144.

26.—(1) Unless it is otherwise specifically provided in a lease made after the 1st day of September, 1897, a covenant by a lessee for payment of taxes shall not be deemed to include an obligation to pay taxes assessed for local improvements. R.S.O. 1914, c. 155, s. 27 (1), *part*.

(2) In the case of a lease made under *The Short Forms of Leases Act* where the words “except for local improvements” are struck out or omitted from the covenant number 3 in Schedule B of that Act such striking out or omission shall be deemed to be a specific provision otherwise made within the meaning of subsection 1. R.S.O. 1914, c. 155, s. 27 (2).

(*As to Drainage Assessment see The Municipal Drainage Act, Rev. Stat. c. 241, s. 91.*)

LENGTH OF NOTICES TO QUIT.

Notice to quit in case of weekly or monthly tenancies.

27. A week's notice to quit and a month's notice to quit, respectively, ending with the week or the month, shall be sufficient notice to determine, respectively, a weekly or monthly tenancy. R.S.O. 1914, c. 155, s. 28.

TENANTS TO NOTIFY LANDLORDS.

Penalty on tenant receiving writ for recovery of land and not notifying his landlord.

28. Every tenant to whom a writ in an action for the recovery of land has been delivered, or to whose knowledge it comes, shall forthwith give notice thereof to his landlord, or to his landlord's bailiff or receiver; and, if he omits so to do, he shall be answerable to his landlord for all damages sustained by him by reason of the failure to give such notice. R.S.O. 1914, c. 155, s. 29.

EXEMPTIONS FROM DISTRESS.

29.—(1) The goods and chattels exempt from seizure under execution shall not be liable to seizure by distress by a landlord for rent, except as hereinafter provided.

Goods exempt from execution to be exempt from distress.

(2) In the case of a monthly tenancy the exemption shall only apply to two months' arrears of rent.

Monthly tenancies.

(3) The person claiming such exemption shall select and point out the goods and chattels which he claims to be exempt.

Selection of exempted goods.

R.S.O. 1914, c. 155, s. 30.

30.—(1) A landlord shall not distrain for rent on the goods and chattels of any person except the tenant or person who is liable for the rent, although the same are found on the premises; but this restriction shall not apply in favour of a person claiming title under an execution against the tenant, or in favour of a person whose title is derived by purchase, gift, transfer, or assignment from the tenant, whether absolute or in trust, or by way of mortgage or otherwise, nor to the interest of the tenant in any goods or chattels on the premises in the possession of the tenant under a contract for purchase, or by which he may or is to become the owner thereof upon performance of any condition, nor where goods or chattels have been exchanged between tenants or persons by the one borrowing or hiring from the other for the purpose of defeating the claim of or the right of distress by the landlord, nor shall the restriction apply where the property is claimed by the wife, husband, daughter, son, daughter-in-law, or son-in-law of the tenant, or by any other relative of his, if such other relative lives on the premises as a member of the tenant's family, or by any person whose title is derived by purchase, gift, transfer or assignment from any relative to whom such restriction does not apply.

Goods on premises not property of tenant to be exempt.

Exceptions.

(2) Nothing in this section shall exempt from distress goods or chattels in a store or shop managed or controlled by an agent or clerk for the owner of such goods or chattels where such clerk or agent is also the tenant and in default, and the rent is due in respect of the store or shop or premises rented therewith and thereto belonging, if such goods or chattels would have been liable to seizure but for this Act.

Goods in store managed by agent who is in default.

(3) Subject to the provisions of section 31, "tenant" in this section shall include a subtenant and the assigns of the tenant and any person in actual occupation of the premises under or with the assent of the tenant during the currency of the lease, or while the rent is due or in arrear, whether or not he has attorned to or become the tenant of the landlord. R.S.O. 1914, c. 155, s. 31.

"Tenant," meaning of in this section.

PROTECTION OF GOODS OF LODGERS FROM DISTRESS.

Declaration
by boarder
or lodger
that immedi-
ate tenant
has no prop-
erty in
goods dis-
trained.

31.—(1) If a superior landlord distrains or threatens to distrain any goods or chattels of a boarder or lodger for arrears of rent due to him by his immediate tenant, the boarder or lodger may serve the superior landlord, or the bailiff or other person employed by him to levy the distress, with a statutory declaration made by the boarder or lodger setting forth that the immediate tenant has no right of property or beneficial interest in such goods or chattels, and that they are the property or in the lawful possession of such boarder or lodger, and also setting forth whether any and what amount by way of rent, board or otherwise is due from the boarder or lodger to the immediate tenant; and to such declaration shall be annexed a correct inventory, subscribed by the boarder or lodger, of the goods and chattels mentioned in the declaration; and the boarder or lodger may pay to the superior landlord, or to the bailiff or other person employed by him, the amount, if any, so due, or so much thereof as is sufficient to discharge the claim of the superior landlord.

Penalty for
improper
levy.

(2) If the superior landlord, bailiff or other person, after being served with the declaration and inventory, and after the boarder or lodger has paid or tendered to him the amount, if any, which, by subsection 1, the boarder or lodger is authorized to pay, levies or proceeds with a distress on the goods or chattels of the boarder or lodger the superior landlord, bailiff or other person shall be guilty of an illegal distress, and the boarder or lodger may replevy such goods or chattels in any court of competent jurisdiction; and the superior landlord shall also be liable to an action, at the suit of the boarder or lodger, in which the truth of the declaration and inventory may be inquired into.

Effect of
payments by
boarder or
lodger.

(3) Any payment made by a boarder or lodger pursuant to subsection 1 shall be a valid payment on account of the amount due from him to the immediate tenant. R.S.O. 1914, c. 155, s. 32.

Duty of
tenant claim-
ing exemp-
tion to
surrender
premises.

32.—(1) A tenant in default for non-payment of rent shall not be entitled to the benefit of the exemption provided for by section 29 unless he gives up possession of the premises forthwith or is ready and offers to do so.

To whom
offer of sur-
render to be
made.

(2) The offer may be made to the landlord or to his agent; and the person authorized to seize and sell the goods and chattels, or having the custody of them for the landlord, shall be considered an agent of the landlord for the purpose of the offer and surrender to the landlord of possession. R.S.O. 1914, c. 155, s. 33.

33.—(1) Where a landlord desires to seize exempted goods Seizure of exempted goods. he shall, after default has been made in the payment of rent and before or at the time of seizure, serve the tenant with a notice, Form 1.

(2) The surrender of possession in pursuance of the notice Effect of surrender of possession. shall be a determination of the tenancy. R.S.O. 1914, c. 155, s. 34.

34.—(1) A tenant may set off against the rent due a debt Right of set-off. due to him by the landlord.

(2) Notice of the claim of set-off, Form 2, may be given Notice thereof. before or after the seizure.

(3) When the notice is given the landlord shall be entitled Effect of notice. to distrain, or to proceed with the distress, only for the balance of the rent after deducting any debt justly due by him to the tenant which is mentioned in the notice. R.S.O. 1914, - c. 155, s. 35.

35.—(1) Service of notices under sections 27, 33 and 34 Service of notices as to exemptions or set-off. shall be made either personally or by leaving the same with a grown-up person in and apparently residing on the premises occupied by the person to be served.

(2) If the tenant cannot be found and his place of abode is not known, or admission thereto cannot be obtained, the posting up of the notice on some conspicuous part of the premises Posting up notice in lieu of service. shall be good service. R.S.O. 1914, c. 155, s. 36.

36. No proceeding under the next preceding four sections shall be rendered invalid by any defect in form. R.S.O. 1914, c. 155, s. 37. Formal defects not to invalidate.

37.—(1) In case of an assignment for the general benefit of creditors, or an order being made for the winding up of an incorporated company, or where a receiving order in bankruptcy or authorized assignment has been made by or against a tenant, the preferential lien of the landlord for rent shall be restricted to the arrears of rent due during the period of three months next preceding, and for three months following the execution of the assignment, and from thence so long as the assignee retains possession of the premises, but any payment to be made to the landlord in respect of accelerated rent shall be credited against the amount payable by the assignee, liquidator or trustee for the period of his occupation. Lien of landlord in bankruptcy, etc.

(2) Notwithstanding any provision, stipulation or agreement in any lease or agreement or the legal effect thereof, in case of an assignment for the general benefit of creditors, or an order being made for the winding up of an incorporated company, or where a receiving order in bankruptcy or auth- Rights of assignee.

orized assignment has been made by or against a tenant, the assignee, liquidator or trustee may at any time within three months thereafter for the purposes of the trust estate and before he has given notice of intention to surrender possession or disclaim, by notice in writing elect to retain the leased premises for the whole or any portion of the unexpired term and any renewal thereof, upon the terms of the lease and subject to the payment of the rent as provided by such lease or agreement, and he may upon payment to the landlord of all arrears of rent, assign the lease with rights of renewal, if any, to any person who will covenant to observe and perform its terms and agree to conduct upon the demised premises a trade or business which is not reasonably of a more objectionable or hazardous nature than that which was thereon conducted by the debtor, and who shall on application of the assignee, liquidator or trustee, be approved by a judge of the Supreme Court of Ontario as a person fit and proper to be put in possession of the leased premises. 1924, c. 42, s. 2, *part*.

Election to
surrender.

38.—(1) The assignee, liquidator or trustee shall have the further right at any time before so electing by notice in writing to the landlord, to surrender possession or disclaim any such lease, and his entry into possession of the leased premises and their occupation by him, while required for the purposes of the trust estate, shall not be deemed to be evidence of an intention on his part to elect to retain possession pursuant to the provisions of this section.

Rights of
sub-tenants.

(2) Where the assignor, or person or firm against whom a receiving order has been made in bankruptcy, or a winding up order has been made, being a lessee, has, before the making of the assignment or such order demised by way of under-lease, approved or consented to in writing by the landlord, any premises and the assignee, liquidator or trustee surrenders, disclaims or elects to assign the lease the under-lessee shall, if he so elects in writing within three months of such assignment or order, stand in the same position with the landlord as though he were a direct lessee from the landlord but, subject, except as to rental payable, to the same liabilities and obligations as the assignor, bankrupt or insolvent company was subject to under the lease at the date of the assignment or order, but the under-lessee shall in such event be required to covenant to pay to the landlord a rental not less than that payable by the under-lessee to the debtor, and if such last mentioned rental was greater than that payable by the debtor to the said landlord the under-lessee shall be required to covenant to pay to the landlord the like greater rental.

Settlement
of disputes.

(3) In the event of any dispute arising under this section such dispute shall be disposed of upon a summary application by a judge of the Supreme Court of Ontario. 1924, c. 42, s. 2, *part*.

DISTRESS.

39. Every person may have the like remedy by distress, and by impounding and selling the property distrained in cases of rents seck, as in case of rent reserved upon lease. R.S.O. 1914, c. 155, s. 39.

40. A person having any rent due and in arrear, upon any lease for life or lives or for years, or at will, ended or determined, may distrain for such arrears, after the determination of the lease, in the same manner as he might have done if the lease had not been ended or determined, if such distress is made within six months after the determination of the lease, and during the continuance of the landlord's title or interest, and during the possession of the tenant from whom the arrears became due. R.S.O. 1914, c. 155, s. 40.

41. A person entitled to any rent or land for the life of another may recover by action or distress the rent due and owing at the time of the death of the person for whose life such rent or land depended as he might have done if the person by whose death the estate in such rent or land determined had continued in life. R.S.O. 1914, c. 155, s. 41.

42. Distress shall be reasonable. R.S.O. 1914, c. 155, s. 42, part.

PROPERTY LIABLE TO DISTRESS.

43. A person having rent due and in arrear upon any demise, lease, or contract may seize and secure any sheaves or cocks of grain, or grain loose, or in the straw, or hay, lying or being in any barn or granary or otherwise upon any part of the land charged with such rent, and may lock up or detain the same, in the place where the same is found, for or in the nature of a distress until the same is replevied; and, in default of the same being replevied, may sell the same after appraisalment thereof to be made; but such grain or hay so distrained shall not be removed by the person distraining, to the damage of the owner thereof out of the place where the same is found and seized, but shall be kept there, as impounded, until it is replevied or sold in default of replevying. R.S.O. 1914, c. 155, s. 43.

44.—(1) A landlord may take and seize, as a distress for arrears of rent, any cattle or live stock of his tenant feeding or pasturing upon any highway, or on any way belonging to the demised premises or any part thereof.

(2) Subject to the provisions of subsection 4, a landlord may take and seize standing crops as a distress for arrears

Distress for rents seck. 4 Geo. II. c. 28, s. 5.

Distress for arrears on leases determined.

8 Anne, c. 18, (or c. 14 in Ruff. head's Ed.) ss. 6 and 7.

Limitation of such distress.

Right of persons entitled to rent during life of another to recover same after death. 32 Hen. VIII., c. 37, s. 4.

Distress to be reasonable. 52 Hen. III., (St. of Marlbridge), c. 4, part; St. of uncert. date. (Imp. Rev. St., 1870, p. 126).

Right to distrain grain, etc.

2 W. & M. Sess. 1, c. 5, s. 3.

Saving.

Right to distrain cattle or live stock.

Right to distrain standing crops.

Disposal
thereof.

11 Geo. II. c.
19, s. 8.

of rent, and may cut, gather, make, cure, carry and lay up the same, when ripe, in the barns or other proper place on the demised premises, and if there is no barn or proper place on the demised premises then in any other barn or proper place which the landlord hires or otherwise procures for that purpose as near as may be to the premises, and may in convenient time appraise, sell or otherwise dispose of the same towards satisfaction for the rent for which such distress is made, and of the charges of such distress, appraisal and sale in the same manner as other goods and chattels may be seized, distrained and disposed of, and the appraisement thereof shall be taken when cut, gathered, cured and made and not before.

Tenant's
right to
notice of
place of
keeping.

(3) Notice of the place where the goods and chattels so distrained are lodged or deposited shall, within one week after the lodging or depositing thereof, be given to the tenant or left at his last place of abode.

Satisfying
distress of
standing
crops.

11 Geo. II. c.
19, s. 9.

(4) If, after a distress of standing crops so taken for arrears of rent, and at any time before the same are ripe and cut, cured or gathered, the tenant pays to the landlord for whom the distress is taken the whole rent then in arrear, with the full costs and charges of making such distress and occasioned thereby, then, upon such payment or lawful tender thereof, the same and every part thereof shall cease, and the standing crops so distrained shall be delivered up to the tenant.

Sale of
standing
crops.

(5) Where standing crops are distrained for rent they may, at the option of the landlord, be advertised and sold in the same manner as other goods; and it shall not be necessary for the landlord to reap, thresh, gather or otherwise market the same.

Liability
of purchaser
of standing
crops.

(6) Any person purchasing standing crops at such sale shall be liable for the rent of the land upon which the same are standing at the time of the sale, and until the same are removed, unless the rent has been paid or has been collected by the landlord, or has been otherwise satisfied, and the rent shall, as nearly as may be, be the same as that which the tenant whose goods were sold was to pay, having regard to the quantity of land, and to the time during which the purchaser occupies it. R.S.O. 1914, c. 155, s. 44.

Conditional
exemption
of certain
beasts.

Stat. of
uncertain
date. Imp.
Rev. St.
1870, p. 126.

45. Beasts that gain the land and sheep shall not be distrained if there are other chattels sufficient to satisfy the demand. R.S.O. 1914, c. 155, s. 45, *part*.

WHERE DISTRESS MAY BE TAKEN.

Chattels not
to be dis-
trained off
the premises.
52 Hen. III.
(St. Marl-
bridge),
c. 15.

46. Save as herein otherwise provided, goods or chattels which are not at the time of the distress upon the premises in respect of which the rent distrained for is due shall not be distrained for rent. R.S.O. 1914, c. 155, s. 46, *part*.

FRAUDULENT REMOVAL.

47.—(1) Where any tenant, for life or lives, term of years, at will, sufferance, or otherwise, of any messuages, lands, tenements, or hereditaments, upon the demise or holding whereof any rent is reserved, due, or made payable, fraudulently or clandestinely conveys away, or carries off or from such premises his goods or chattels to prevent the landlord from distraining the same for arrears of rent so reserved, due, or made payable the landlord or any person by him for that purpose lawfully empowered, may, within thirty days next ensuing such conveying away or carrying off, take and seize such goods and chattels wherever the same are found, as a distress for such arrears of rent, and the same sell or otherwise dispose of in such manner as if such goods and chattels had actually been distrained by the landlord upon such premises for such arrears of rent.

Landlords may distrain goods fraudulently carried off the premises.

11 Geo. II. c. 19, s. 1.

(2) No landlord or other person entitled to such arrears of rent shall take or seize, as a distress for the same, any such goods or chattels which have been sold in good faith and for a valuable consideration, before such seizure made, to any person not privy to such fraud. R.S.O. 1914, c. 155, s. 47.

Exception.

11 Geo. II. c. 19, s. 2.

48. Where any goods or chattels fraudulently or clandestinely conveyed or carried away by any tenant, his servant, or agent, or other person aiding or assisting therein are or are believed to be in any house, barn, stable, outhouse, yard, close or place, locked up, fastened, or otherwise secured so as to prevent them from being taken and seized as a distress for arrears of rent, the landlord or his agent may take and seize, as a distress for rent, such goods and chattels, first calling to his assistance a constable or peace-officer who is hereby required to aid and assist therein, and, in case of a dwelling-house, oath being also first made of a reasonable ground to believe that such goods or chattels are therein, and, in the daytime, break open and enter into such house, barn, stable, outhouse, yard, close or place and take and seize such goods and chattels for the arrears of rent as he might have done if they were in an open field or place upon the premises from which they were so conveyed or carried away. R.S.O. 1914, c. 155, s. 48.

Right of landlord to break open houses where goods fraudulently secured.

11 Geo. II. c. 19, s. 7.

49. If a tenant so fraudulently removes, conveys away or carries off his goods or chattels, or if any person wilfully and knowingly aids or assists him in so doing, or in concealing the same, every person so offending shall forfeit and pay to the landlord double the value of such goods, to be recovered by action in any court of competent jurisdiction. R.S.O. 1914, c. 155, s. 49.

Penalty for fraudulently removing, or assisting to remove, goods.

11 Geo. II. c. 19, s. 3.

IMPOUNDING DISTRESS.

Beasts dis-
trained not
to be driven
out of the
municipality.
3 Edw. I.
(St. of
Westminster
Prim.) c. 16.
and 1 P. & M.
c. 12, s. 1,
part.

50.—(1) Beasts or cattle distrained shall not be removed or driven out of the city, town, village or township in which they are distrained, except to a fitting pound or enclosure within the same county or district not more than three miles distant from the place where the distress is taken. R.S.O. 1914, c. 155, s. 50 (1), *part*.

Impounding.
1 P. & M.
c. 12, s. 1,
part.

(2) No cattle, or other goods or chattels, distrained or taken by way of distress for any cause at one time shall be impounded in several places.

Penalty.

(3) Every person offending against this section shall forfeit to the person aggrieved \$20 in addition to the damages sustained by him.

Where goods
may be
impounded.

(4) Any person lawfully taking any distress for any kind of rent may impound, or otherwise secure the distress so made, in such place or on such part of the premises chargeable with the rent as is most fit and convenient for that purpose, and may appraise, sell and dispose of the same upon the premises; and it shall be lawful for any person to come and go to and from such place or part of the premises where any distress for rent is so impounded and secured to view, appraise and buy, and to carry off or remove the same on account of the purchaser thereof. R.S.O. 1914, c. 155, s. 50 (2-4).

11 Geo. II.
c. 19, s. 10.

POUND BREACH, OR RESCUE.

Pound
breach or
rescue, dam-
ages for.

2 W. & M.
Sess. 1, c. 5,
s. 4.

51. Upon any pound breach or rescue of goods or chattels distrained for rent the person offending, or the owner of the goods distrained, in case the same are afterwards found to have come to his use or possession, shall forfeit to the person aggrieved \$20 in addition to the damages sustained by him. R.S.O. 1914, c. 155, s. 51.

SALE OF GOODS DISTRAINED.

Sale of
distress,
when it may
be made.

(See 2 W. &
M. Sess. 1,
c. 5, s. 1.

52. Where any goods or chattels are distrained for any rent reserved and due upon any demise, lease or contract, and the tenant or owner of them does not, within five days next after such distress taken and notice thereof, with the cause of such taking, left at the dwelling house or other most conspicuous place on the premises charged with the rent distrained for, replevy the same, then, after such distress and notice and the expiration of such five days, the person distraining shall cause the goods and chattels so distrained to be appraised by two appraisers, who shall first be sworn to appraise the same truly, according to the best of their understandings, a memorandum of which oath is to be indorsed on the inventory, and after such appraisement the

Appraise-
ment.

person so distraining may lawfully sell the goods and chattels so distrained for the best price which can be got for the same towards satisfaction of the rent for which the same were distrained and of the charges of such distress, appraisement and sale, and shall hold the overplus, if any, for the owner's use and pay the same over to him on demand. R.S.O. 1914, c. 155, s. 52.

WRONGFUL OR IRREGULAR DISTRESS.

53. Where any distress is made for any kind of rent justly due, and any irregularity or unlawful act shall afterwards be done by the person distraining, or by his agent, or if there has been an omission to make the appraisement under oath, the distress itself shall not be therefore deemed to be unlawful, nor the person making it be deemed a trespasser *ab initio*, but the person aggrieved by such unlawful act or irregularity may recover by action full satisfaction for the special damage sustained thereby. R.S.O. 1914, c. 155, s. 53.

54.—(1) A distrainer who takes an excessive distress, or takes a distress wrongfully, shall be liable in damages to the owner of the goods or chattels distrained.

(2) Where a distress and sale are made for rent pretended to be in arrear and due when, in truth, no rent is in arrear or due to the person distraining, or to the person in whose name or right such distress is taken, the owner of the goods or chattels distrained and sold, his executors, or administrators shall be entitled, by action to be brought against the person so distraining, to recover full satisfaction for the damage sustained by the distress and sale. R.S.O. 1914, c. 155, s. 54.

GOODS TAKEN IN EXECUTION NOT TO BE REMOVED WITHOUT PAYMENT OF RENT.

55.—(1) Goods or chattels lying or being in or upon any land leased for life or lives, or term of years, at will, or otherwise shall not be liable to be taken by virtue of any execution issued out of the Supreme Court or out of a county or district court on any pretence whatsoever, unless the party at whose suit the execution is sued out before the removal of such goods or chattels from the premises by virtue of such execution pays to the landlord or his bailiff all money due for rent of the premises at the time of the taking of such goods or chattels by virtue of such execution if the arrears of rent do not amount to more than one year's rent.

(2) If such arrears exceed one year's rent the party at whose suit such execution is sued out, on paying the landlord or his bailiff one year's rent, may proceed to execute his judgment.

What to be
paid to
execution
creditor.

(3) The sheriff or other officer shall levy and pay to the execution creditor as well the money so paid for rent as the execution money. R.S.O. 1914, c. 155, s. 55.

(As to executions out of Division Courts, see *The Division Courts Act, Rev. Stat. c. 95, s. 209.*)

CROPS SEIZED UNDER EXECUTION.

Liability of
growing
crops seized
and sold
under execu-
tion for ac-
cruing rent.

56. Where all or any part of the standing crops of the tenant of any land is seized and sold by any sheriff or other officer by virtue of any writ of execution such crops, so long as the same remain on the land in default of sufficient distress of the goods and chattels of the tenant, shall be liable for the rent which may accrue and become due to the landlord after any such seizure and sale, and to the remedies by distress for recovery of such rent, and that notwithstanding any bargain and sale or assignment which may have been made or executed of such crops by any such sheriff or other officer. R.S.O. 1914, c. 155, s. 56.

Imp. Act
14-15 V. c.
25, s. 2.

LIABILITY OF TENANTS OVERHOLDING.

Penalty of
double value
for over-
holding.

57. Where a tenant for any term for life, lives or years, or other person who comes into possession of any land, by, from, or under, or by collusion with such tenant, wilfully holds over such land or any part thereof after the determination of such term, and after notice in writing given for delivering the possession thereof by his landlord or the person to whom the remainder or reversion of such land belongs or his agent thereunto lawfully authorized, such tenant or other person so holding over shall, for and during the time he so holds over or keeps the person entitled out of possession, pay to such person or his assigns at the rate of double the yearly value of the land so detained for so long as the same is detained, to be recovered by action in any court of competent jurisdiction, against the recovering of which penalty there shall be no relief. R.S.O. 1914, c. 155, s. 57.

4 Geo. II. c.
28, s. 1.

Penalty of
double rent
for overhold-
ing after
tenant gives
notice to
quit.

58. Where a tenant gives notice of his intention to quit the premises by him holden at a time mentioned in such notice, and does not accordingly deliver up the possession thereof at the time mentioned in such notice the tenant shall from thenceforward pay to the landlord double the rent or sum which he should otherwise have paid, to be levied, sued for, and recovered at the same times and in the same manner as the single rent or sum before the giving such notice could be levied, sued for, or recovered; and such double rent or sum shall continue to be paid while such tenant continues in possession. R.S.O. 1914, c. 155, s. 58.

11 Geo. II.
c. 19,
s. 18.

EXECUTORS OR ADMINISTRATORS.

59. The executors or administrators of a landlord may distrain for the arrears of rent due to such landlord in his lifetime, and may sue for the same in like manner as such landlord might have done if living, and the powers and provisions contained in this Act relating to distresses for rent shall be applicable to the distresses so made. R.S.O. 1914, c. 155, s. 59.

Right of personal representatives to distrain for arrears.

ATTORNMENT.

60. Every attornment of a tenant of any land to a stranger claiming title to the estate of his landlord shall be absolutely null and void; and the possession of his landlord shall not be deemed to be changed, altered or affected by any such attornment; but nothing herein shall vacate or affect any attornment made pursuant to and in consequence of a judgment or order of a court, or made with the privity and consent of the landlord, or to any mortgagee after the mortgage has become forfeited. R.S.O. 1914, c. 155, s. 60.

Nullity of attornment to stranger.

11 Geo. II. c. 19, s. 11.

61.—(1) Every grant or conveyance of any rent or of the reversion or remainder of any land shall be good and effectual without any attornment of the tenant of the land out of which such rent issues, or of the particular tenant upon whose particular estate any such reversion or remainder is expectant or depending.

4-5 Anne, c. 3 (or c. 16, in Ruffhead's Ed.), s. 9.

(2) A tenant shall not be prejudiced or damaged by the payment of rent to any grantor or by breach of any condition for non-payment of rent before notice to him of such grant by the grantee. R.S.O. 1914, c. 155, s. 61.

Tenant not to be prejudiced.

4-5 Anne, c. 3, (or c. 16, in Ruffhead's Ed.) s. 10.

RENEWALS—CHIEF LEASE MAY BE RENEWED WITHOUT SURRENDER OF UNDER-LEASE.

62.—(1) Where a lease is duly surrendered in order to be renewed, and a new lease is made and executed by the chief landlord, the new lease shall, without a surrender of all or any of the under-leases, be as good and valid as if all the under-leases derived thereout had been likewise surrendered at or before the time of taking of such new lease.

Chief leases may be renewed without surrendering all the under-leases.

4 Geo. II. c. 28, s. 6.

(2) Every person in whom any estate for life, or lives, or for years, is from time to time vested by virtue of such new lease shall be entitled to the rents, covenants and duties, and have like remedy for recovery thereof, and the under-lessees shall hold and enjoy the land in the respective under-leases comprised as if the original lease had been kept on foot and continued, and the chief landlord shall have and be entitled to such and the same remedy by distress or entry in and upon the land comprised in any such under-lease for

Rights and remedies of parties thereunder.

the rents and duties reserved by such new lease, so far as the same do not exceed the rents and duties reserved in the lease out of which such under-lease was derived, as he would have had if such former lease had been still continued or as he would have had if the respective under-leases had been renewed under such new principal lease. R.S.O. 1914, c. 155, s. 62.

RENEWAL OF LEASE BY ABSENTEES.

Who may
renew on be-
half of
persons out
of Ontario.

Imp. Act 11
Geo. IV., and
1 W. IV., c.
65, s. 18.

63.—(1) Where any person who, in pursuance of any covenant or agreement in writing, if within Ontario and amenable to the process of the Supreme Court, might be compelled to execute any lease by way of renewal, is not within Ontario, or is not amenable to the process of the Court, the Court, upon the motion of any person entitled to such renewal, whether such person is or is not under any disability, may direct such person as the Court thinks proper to appoint for that purpose to accept a surrender of the subsisting lease, and to make and execute a new lease in the name of the person who ought to have renewed the same.

Validity of
such new
lease.

(2) A new lease executed by the person so appointed shall be as valid as if the person in whose name the same was made was alive and not under any disability and had himself executed it.

Discretion
of court
to direct
action to be
brought.

(3) In every such case it shall be in the discretion of the Court to direct an action to be brought to establish the right of the person seeking the renewal, and not to make the order for such new lease unless by the judgment to be made in such action, or until after it shall have been entered.

Conditions.

Imp. Act 11
Geo. IV., and
1 W. IV., c.
65, s. 20.

(4) A renewed lease shall not be executed by virtue of this section in pursuance of any covenant or agreement unless the sum or sums of money, if any, which ought to be paid on such renewal and the things, if any, which ought to be performed in pursuance of such covenant or agreement by the tenant be first paid and performed, and counterparts of every such renewed lease shall be duly executed by the tenant.

Premiums,
how to be
paid.

Imp. Act 11
Geo. IV., and
1 W.
IV., c. 65,
s. 21.

(5) All sums of money which are had, received or paid for, or on account of, the renewal of any lease by any person out of Ontario or not amenable to the process of the Supreme Court, after a deduction of all necessary incidental charges and expenses, shall be paid to such person or in such manner or into the Supreme Court to such account, and be applied and disposed of as the Court shall direct.

Costs.

Imp. Act 11
Geo. IV., and
1 W. IV., c.
65, s. 35.

(6) The Court may order the costs and expenses of and relating to the applications, orders, directions, conveyances and transfers, or any of them, to be paid and raised out of or from the land, or the rents in respect of which the same are respectively made, in such manner as the Court shall deem proper. R.S.O. 1914, c. 155, s. 63.

PART II.

DISPUTES AS TO RIGHT TO DISTRAIN.

64. In this Part,Interpreta-
tion.

“Judge” shall mean judge of the county or district court of the county or district in which a distress to which this Part applies is made. R.S.O. 1914, c. 155, s. 64.

65.—(1) Where goods or chattels are distrained by a landlord for arrears of rent, and the tenant disputes the right of the landlord to distrain in respect of the whole or any part of the goods or chattels, or disputes the amount claimed by the landlord, or the tenant claims to set off against the rent a debt which the landlord disputes, the landlord or the tenant may apply to the judge to determine the matters so in dispute, and the judge may hear and determine the same in a summary way, and may make such order in the premises as he may deem just. R.S.O. 1914, c. 155, s. 65, *part*.

Disputes as
to right to
distrain.

(2) Where the tenant disputes the right of the landlord to distrain in respect of the whole or any part of the goods or chattels, or disputes the amount claimed by the landlord, the landlord or the tenant may before any distress has been made apply to the judge to determine the matter so in dispute, and the judge may hear and determine the same in a summary way, and may make such order in the premises as he may deem just. 1923, c. 34, s. 2, *part*.

Application
to judge by
landlord or
tenant.

66. Where notice of such an application has been given to the landlord or tenant as the case may be, the judge, pending the disposition of it by him, may make such order as he may deem just for the restoration to the tenant of the whole or any part of the goods or chattels distrained, or preventing a distress being made, upon the tenant giving security, by payment into court or otherwise as the judge may direct, for the payment of the rent which shall be found due to the landlord and for the costs of the distress and of the proceedings before the judge and of any appeal from his order, or such of them as the tenant may be ordered to pay. R.S.O. 1914, c. 155, s. 66, *part*.

Order of
judge pend-
ing deter-
mination of
dispute.

67. The judge shall have jurisdiction and authority to determine any question arising upon the application which the court of which he is judge has jurisdiction to determine in an action brought in that court. R.S.O. 1914, c. 155, s. 67.

Jurisdiction
of judge.

68. Where the amount of the rent claimed by the landlord exceeds \$800, or where any question is raised which a county or district court would not have jurisdiction to try in an action brought in such court, the judge shall not, without the consent in writing of the landlord and the tenant deal with the application summarily, but shall direct an action

When judge
to direct
that action
be brought
or issue
tried.

to be brought or an issue to be tried in the Supreme Court for the determination of the matters in dispute. R.S.O. 1914, c. 155, s. 68, *part*.

Interim
order for
restoration
of goods on
security be-
ing given,
etc.

69.—(1) Where the judge, under the next preceding section, directs an action to be brought or an issue to be tried he shall have the like power as to the restoration to the tenant of the goods or chattels or of any part of them and to the prevention of a distress being made as is conferred by section 66, and where it is exercised the security shall be as provided in that section except that, as to costs, it shall be not only for the costs of the proceedings before the judge but also for the costs of the action or issue, including any appeal therein or such of them as the tenant may be ordered to pay. R.S.O. 1914, c. 155, s. 69 (1), *part*.

Cost of
proceedings.

(2) The Supreme Court shall determine by whom and in what manner the costs of the action or issue and of the application to the judge shall be borne and paid.

Entry of
judgment.

(3) Judgment may be entered in accordance with the direction of the court, made at or after the trial, and may be enforced in like manner as a judgment of the Court. R.S.O. 1914, c. 155, s. 69 (2, 3).

When deci-
sion of judge
to be final.

70. Where the amount claimed by the landlord does not exceed \$100 the decision of the judge shall be final. R.S.O. 1914, c. 155, s. 70.

Appeal from
summary
determina-
tion.

71. Where the amount claimed by the landlord exceeds \$100 an appeal shall lie from any order of the judge, made on an application to him under the provisions of section 65, by which the matters in dispute are determined, in like manner as if the same were a judgment of the court of which he is judge pronounced in an action. R.S.O. 1914, c. 155, s. 71.

Appeal when
action
brought or
issue tried.

72. Where an issue is tried there shall be the same right of appeal from the judgment as if the judgment had been pronounced in an action. R.S.O. 1914, c. 155, s. 72.

Scale of
costs.

73. Where the amount claimed by the landlord does not exceed \$100 the costs of the proceedings before the judge shall be on the division court scale, and where the amount claimed exceeds \$100 they shall be on the county court scale, except in an action or issue in the Supreme Court directed under section 68. R.S.O. 1914, c. 155, s. 73.

Other reme-
dies of ten-
ant.

74. Nothing in this Part shall take away or affect any remedy which a tenant may have against his landlord or require a tenant to proceed under this Part instead of by bringing an action, but where, instead of proceeding under this Part, he proceeds by action the court in which the action is brought, if of opinion that it was unnecessarily brought and that a complete remedy might have been had by a proceeding under this Part, may direct the tenant, although he succeeds, to pay any additional costs occasioned by his having brought the action. R.S.O. 1914, c. 155, s. 74.

PART III.

OVERHOLDING TENANTS.

75.—(1) Where a tenant after his lease or right of occupation, whether created by writing or by parol, has expired or been determined, either by the landlord or by the tenant, by a notice to quit or notice pursuant to a proviso in any lease or agreement in that behalf, or has been determined by any other act whereby a tenancy or right of occupancy may be determined or put an end to, wrongfully refuses or neglects to go out of possession of the land demised to him, or which he has been permitted to occupy, his landlord may apply upon affidavit to the judge of the county or district court of the county or district in which the land lies to make the inquiry hereinafter provided for.

Application
to county
court judge
against over-
holding
tenant.

(2) The judge shall in writing appoint a time and place at which he will inquire and determine whether the person complained of was tenant to the complainant for a term or period which has expired or has been determined by a notice to quit or for default in payment of rent or otherwise, and whether the tenant holds the possession against the right of the landlord, and whether the tenant, having no right to continue in possession, wrongfully refuses to go out of possession.

Inquiring
and deter-
mination.

(3) Notice in writing of the time and place appointed, stating briefly the principal facts alleged by the complainant as entitling him to possession, shall be served upon the tenant or left at his place of abode at least three days before the day so appointed, if the place appointed is not more than twenty miles from the tenant's place of abode, and one day in addition for every twenty miles above the first twenty, reckoning any broken number above the first twenty as twenty miles, to which notice shall be annexed a copy of the judge's appointment and of the affidavit on which it was obtained, and of the documents to be used upon the application. R.S.O. 1914, c. 155, s. 75.

Notice there-
of to be
served on
the tenant.

76. The proceedings under this Part shall be intituled in the county or district court of the county or district in which the land lies, and shall be styled:

Proceedings,
how
intituled.

"In the matter of (*giving the name of the party complaining*),
Landlord, against (*giving the name of the party complained against*)
Tenant."

R.S.O. 1914, c. 155, s. 76.

77.—(1) If, at the time and place appointed, the tenant fails to appear, the judge, if it appears to him that the tenant wrongfully holds against the right of the landlord, may order a writ of possession, Form 3, directed to the sheriff

Proceedings
in default of
appearance.

of the county or district in which the land lies to be issued commanding him forthwith to place the landlord in possession of the land.

In case of
appearance.

(2) If the tenant appears the judge shall, in a summary manner, hear the parties and their witnesses, and examine into the matter, and if it appears to the judge that the tenant wrongfully holds against the right of the landlord he may order the issue of the writ. R.S.O. 1914, c. 155, s. 77.

Power of
amendment.

78. The judge shall have the same power to amend or excuse irregularities in the proceedings as he would have in an action.

Appeal.

Rev. Stat.
c. 91.

79.—(1) An appeal shall lie to a Divisional Court from the order of the judge granting or refusing a writ of possession and the provisions of *The County Courts Act* as to appeals shall apply to such an appeal.

Discharging
order for
possession on
appeal.

(2) If the Divisional Court is of opinion that the right to possession should not be determined in a proceeding under this Part the court may discharge the order of the judge, and the landlord may in that case proceed by action for the recovery of possession.

Restoring
tenant to
possession.

(3) When the order is discharged, if possession has been given to the landlord under a writ of possession, the court may direct that possession be restored to the tenant. R.S.O. 1914, c. 155, s. 78.

FORM 1.

(Section 33.)

NOTICE TO TENANT.

Take notice that I claim \$ _____ for rent due to me in respect of the premises which you hold as my tenant, namely (*here briefly describe them*); and unless the said rent is paid, I demand from you immediate possession of the said premises; and I am ready to leave in your possession such of your goods and chattels as in that case only you are entitled to claim exemption for.

Take notice further, that if you neither pay the said rent nor give me possession of the said premises within three days after the service of this notice, I am by *The Landlord and Tenant Act* entitled to seize and sell, and I intend to seize and sell all your goods and chattels, or such part thereof as may be necessary for the payment of the said rent and costs.

Dated this day of , 19 .

A. B. (landlord).

To C.D. (tenant).

R.S.O. 1914, c. 155, Form 1.

FORM 2.

(Section 34.)

NOTICE TO LANDLORD.

Take notice, that under *The Landlord and Tenant Act* I wish to set off against rent due by me to you, the debt which you owe to me on your promissory note for
dated _____ (or as the case may be).

Dated this day of , 19 .

C.D. (tenant).

R.S.O. 1914, c. 155, Form 2.

FORM 3.

(Section 77.)

WRIT OF POSSESSION.

ONTARIO,

To Wit:

George the Fifth, by the Grace of God, of the United Kingdom of Great Britain, Ireland, and the Dominions beyond the Seas, King, Defender of the Faith.

[L.S.]

To the Sheriff of the

Greeting:

Whereas

Judge of the

Court

of , by his order dated the
day of , 19 , made in pursuance of *The
Landlord and Tenant Act*, on the complaint of
against

that , adjudged
of was entitled to the possession

with the appurtenances in your Bailiwick, and that a Writ should
issue out of Our said Court accordingly (*if costs are awarded add*
and also ordered and directed that the said
should pay the costs of the proceedings had under the said Act,
which have been taxed at the sum of).

THEREFORE, WE COMMAND YOU that without delay you cause the said
to have possession of the said land
and premises, with the appurtenances (*if costs are awarded add* and
We also command you that of the goods and chattels and lands and
tenements of the said

in your Bailiwick, you cause to be made
being the said costs so taxed and have that money in Our said
Court immediately after the execution hereof, to be rendered to
the said).

And in what manner you shall have
executed this Writ make appear to Our said Court, immediately
after the execution hereof, and have there then this Writ.

Witness,

Judge of Our said

Court at

, this

day

of

, 19 .

Clerk.

Issued from the office of the Clerk of the County (*or* District)
Court of the County (*or* United Counties, *or* District) of

Clerk.

CHAPTER 191.

The Apportionment Act.

1. In this Act,Interpreta-
tion.

- (a) "Annuities" shall include salaries and pensions; "Annuities."
- (b) "Dividends" shall include all payments made by the "Dividends,"
name of dividend, bonus or otherwise out of
revenues of trading or other public companies
divisible between all or any of the members, whe-
ther such payments are usually made or declared
at any fixed times or otherwise, but shall not in-
clude payments in the nature of a return or re-im-
bursement of capital; and
- (c) "Rent" shall include rent service, rent charge and "Rent,"
rent seek and all periodical payments or renderings
in lieu or in the nature of rent. R.S.O. 1914,
c. 156, s. 2.

2. Dividends shall, for the purposes of this Act, be deemed ^{Dividends.}
to have accrued by equal daily increment during and within ^{how deemed}
the period for or in respect of which the payment of the same ^{to accrue.}
is declared or expressed to be made. R.S.O. 1914, c. 156, s. 3.

3. All rents, annuities, dividends, and other periodical pay- ^{Rents, etc.,}
ments in the nature of income, whether reserved or made pay- ^{how to}
able under an instrument in writing or otherwise, shall, like ^{accrue and}
interest on money lent, be considered as accruing from day to ^{be appor-}
day, and shall be apportionable in respect of time accordingly. ^{tionable.}
R.S.O. 1914, c. 156, s. 4. <sup>Imp. Act
33-34 V. c.
35, s. 2.</sup>

4. The apportioned part of any such rent, annuity, divi- ^{When ap-}
dend or other periodical payment shall be payable or recover- ^{portioned,}
able in the case of a continuing rent, annuity, dividend or ^{part of rent,}
other such payment when the entire portion, of which such ^{etc., to be}
apportioned part forms part, becomes due and payable, and ^{payable.}
not before; and in the case of a rent, annuity or other such
payment determined by re-entry, death or otherwise, when the ^{Imp. Act,}
next entire portion of the same would have been payable if ^{33-34 V. c.}
the same had not so determined, and not before. R.S.O. 1914, ^{35, s. 3.}
c. 156, s. 5.

Recovering
apportioned
parts.

Imp. Act 33-
34 V. c. 35,
s. 4.

Proviso as to
rents re-
served in cer-
tain cases.

Policies
of assurance.
Imp. Act 33-
34, V. c. 35,
s. 6.
Stipulation
against ap-
portionment.
Ibid, s. 7.

5.—(1) All persons and their respective heirs, executors, administrators and assigns, and also the executors, administrators and assigns, respectively, of persons whose interests determine with their own deaths, shall have such or the same remedies for recovering such apportioned parts when payable, allowing proportionate parts of all just allowances, as they respectively would have had for recovering such entire portions if entitled thereto.

(2) The persons liable to pay rents reserved out of or charged on lands or other hereditaments, and the same lands or other hereditaments shall not be resorted to for any such apportioned part forming part of the entire or continuing rent specifically, but the entire or continuing rent, including such apportioned part, shall be recovered and received by the heir or other person, who, if the rent had not been apportionable under this Act, or otherwise, would have been entitled to such entire or continuing rent; and such apportioned part shall be recoverable by action from such heir or other person by the executors or other persons entitled under this Act to the same. R.S.O. 1914, c. 156, s. 6.

6. Nothing in the preceding provisions shall render apportionable any annual sums made payable in policies of assurance of any description, or extend to any case in which it is expressly stipulated that no apportionment shall take place. R.S.O. 1914, c. 156, s. 7.

SECTION XII.

PROFESSIONS AND CALLINGS.

1. PROFESSION OF THE LAW.

CHAPTER 192.

The Law Society Act.

1. In this Act, "The Society" shall mean "The Law Interpretation.
Society of Upper Canada." R.S.O. 1914, c. 157, s. 2.

LAW SOCIETY CONTINUED.

2. The treasurer and benchers of the Society, and their Name.
successors, shall be a body corporate and politic, by the name
of "The Law Society of Upper Canada," and may purchase,
acquire, take by gift, bequest, donation or otherwise, for the
purposes of the Society but for no other purpose, and may sell, Power as to
mortgage, lease or dispose of any real or personal property. real estate.
R.S.O. 1914, c. 157, s. 3, *part*.

3. The judges of the Supreme Court shall be visitors of Visitors.
the Society. R.S.O. 1914, c. 157, s. 5.

4. Members of the Bar of Ontario, and persons admitted Members.
to the Society as students at law, shall be members of the
Society. R.S.O. 1914, c. 157, s. 6.

ELECTION OF BENCHERS.

5. The following, if and while continuing members of the Ex-officio
Bar of Ontario, shall, *ex-officio*, be benchers of the Society: benchers.

(a) The Minister of Justice, the Solicitor-General of Minister of
Canada, and every person who has held either of Justice and
those offices; Solicitor-
General of
Canada.

(b) The Attorney-General of Ontario, and every person Attorney-
who has held that office; General of
Ontario.

Treasurer
for seven
years.

(c) Every person who has for seven consecutive years held the office of treasurer of the Society;

Benchers
four times
elected.

(d) Every person who has been elected a bencher at four quinquennial elections;

(e) Every retired judge of the Supreme Court of Canada or of the Exchequer Court of Canada who was at the time of his appointment a member of the Bar of Ontario; and

(f) Every retired judge of the Supreme Court of Ontario. R.S.O. 1914, c. 157, s. 7 (1, 2), *part*; 1914, c. 2, Sched. (27).

Elective
benchers.

6. The benchers, exclusive of the *ex-officio* members, shall be thirty in number, and shall be elected from the members of the Bar as hereinafter provided. R.S.O. 1914, c. 157, s. 8.

Appointment
of scrutineers.

7.—(1) The benchers shall, during the month of February next preceding an election, appoint, with their assent, two members of the Bar, who, with the treasurer, shall act as scrutineers at the election, and who shall not be eligible for election to the office of bencher, and a third person, who shall be a member of the Bar and not a candidate, and assist the treasurer and act for him in his absence, in counting the votes. R.S.O. 1914, c. 157, s. 9 (1), *part*.

Temporary
vacancies.

(2) The treasurer may fill any vacancy in the office of scrutineer, and if he sees fit may appoint temporarily any qualified person to act as substitute for any scrutineer or other person appointed during the absence of such person. R.S.O. 1914, c. 157, s. 9 (2).

Election,
when to be
held

8.—(1) An election shall be held on the first Thursday after the second Wednesday in April, 1931, and the subsequent elections shall be held on the first Thursday after the second Wednesday in April of every fifth year thereafter; but if the scrutineers are unable to complete the scrutiny upon such day, the same shall be continued from day to day until the election is declared. R.S.O. 1914, c. 157, s. 10 (1), *part*.

Absence of
scrutineer.

(2) If any scrutineer is absent during the scrutiny the others may proceed therewith. R.S.O. 1914, c. 157, s. 10 (2).

Who may
vote and for
whom.

9. Every person who is a member of the Bar in good standing and not in arrears for fees to the Society shall be an elector qualified to vote for thirty persons for benchers pursuant to this Act. R.S.O. 1914, c. 157, s. 11.

List of
voters.

10.—(1) The secretary shall, in the month of January, previous to the time for holding an election, make out and sign an alphabetical list of the members of the Bar who are entitled to vote at such election. R.S.O. 1914, c. 157, s. 12 (1), *part*.

(2) Such list may be examined by any member of the Bar at all reasonable times at the office of the secretary, and if, within fifteen days after the last day of January, a member of the Bar complains to the secretary, in writing, of the improper omission or insertion of any name in the list, the secretary shall forthwith examine into the complaint and rectify the error if any there be. R.S.O. 1914, c. 157, s. 12 (2), *part*. Complaints or errors in the list.

(3) If any person is dissatisfied with the decision of the secretary, he may appeal to the scrutineers, whose decision shall be final, and the list shall remain or be altered in accordance with their decision, and the list as it stands on the 5th day of March shall be signed by the secretary and scrutineers and shall be the settled list of persons entitled to vote at the election. R.S.O. 1914, c. 157, s. 12 (3). Appeal to scrutineers. Finality of list.

(4) The secretary shall add to the list the names of all persons called to the Bar after the last day of January and before the day fixed for the receipt of nomination papers; and no alteration shall be made in the list except as provided in this section. R.S.O. 1914, c. 157, s. 12 (4), *part*. Adding persons called to the Bar in term preceding.

11. No person shall be eligible as a benchers at any election who is not qualified to vote at the election. R.S.O. 1914, c. 157, s. 13. Qualifications of benchers.

12. At all elections retiring benchers shall be eligible for re-election. R.S.O. 1914, c. 157, s. 14. Retiring benchers eligible.

13.—(1) No person shall be elected as a benchers unless he has been nominated as hereinafter mentioned, and every vote cast for any person not so nominated shall be void. Nomination required.

(2) The nomination shall be in writing by a nomination paper, which shall be signed by at least ten of the persons entitled to vote at the election. Nomination paper.

(3) The nomination paper shall be delivered at the office of the secretary or sent by mail to him, so as to be received during the first fifteen days of the month of March of the year in which the election is to take place, and if not so delivered or received shall be invalid and shall not be acted upon. Delivery.

(4) The secretary shall, within the first four days after the last day for the receipt of nomination papers, mail notice in writing to each nominee informing him of his nomination, but the failure to mail such notice or the non-receipt thereof by the nominee shall not invalidate the election. Notice to nominee.

(5) Any person who is nominated may refuse to become a candidate, and he shall be deemed not to have been so nominated and his name shall not be included in the list of candi- Declining nomination.

dates if he notifies the secretary in writing of his refusal within four days after the mailing of such notice to him.

Election by
acclamation.

(6) If the number of persons who remain as candidates is not greater than the number of benchers to be elected they shall be elected benchers. R.S.O. 1914, c. 157, s. 15.

Proceedings
in case of
poll.

14. In case a poll is necessary the secretary shall forthwith, after the time for receiving notice of refusal to be a candidate has expired, send to each member of the Bar, whose name is on the list of persons entitled to vote, if his residence is known to the secretary, one copy of the form of voting paper with a list of the candidates which shall indicate by asterisks and a footnote those whose term of office as benchers is about to expire. R.S.O. 1914, c. 157, s. 16, *part*.

Voting
papers.

When voting
papers to
be delivered.

15. The votes shall be given by closed voting papers, Form 1, delivered at the office of the secretary or sent by mail to him so as to be received thereat not later than the second Wednesday of April of the year of the election. R.S.O. 1914, c. 157, s. 17.

Counting
the votes.

16. Beginning on the first Thursday after the second Wednesday in April and proceeding continuously thereafter, except on holidays, the voting papers shall be opened by the secretary in the presence of the treasurer or the person appointed to assist him, and of the scrutineers who shall scrutinize and count the votes and keep a record thereof in a book to be provided by the Society. R.S.O. 1914, c. 157, s. 18.

Void vote.

17. A vote cast for any person who is not upon the list of candidates or who is ineligible to be a bencher or who is a bencher *ex-officio* shall be null and void; and the election shall be declared as if such vote had not been cast. R.S.O. 1914, c. 157, s. 19, *part*.

Voting for
more than
thirty
members.

18. In the event of a voter placing more than thirty names on his voting paper the first thirty only shall be counted, notwithstanding that any of the thirty persons so named may be ineligible for election or is not a candidate or is an *ex-officio* bencher. R.S.O. 1914, c. 157, s. 20, *part*.

Equality of
votes.

19. If an equality of votes between two or more persons leaves the election of one or more benchers undecided the scrutineers shall forthwith put into a ballot-box a number of papers with the names of the candidates having such equality of votes written thereon, one for each candidate, and the secretary shall draw by chance from the ballot-box, in the presence of the scrutineers, one or more of such papers sufficient to make up the required number, and the persons whose names are upon the papers so drawn shall be declared to have been elected as benchers. R.S.O. 1914, c. 157, s. 21.

20.—(1) The thirty persons who have the highest number of votes shall be declared by the secretary to have been elected as benchers for the ensuing term of five years. (Who to be declared elected.)

(2) If among the thirty persons who have the highest number of votes there is any bencher who by virtue of such election becomes *ex-officio* a bencher, the scrutineers shall so report and, subject to the provisions of section 17, the thirty other persons having the highest number of votes shall be declared to have been elected as benchers for the ensuing term of five years. R.S.O. 1914, c. 157, s. 22. Where ex-officio bencher is elected.

21. Any person entitled to vote at any such election shall be entitled to be present at the counting of the votes. R.S.O. 1914, c. 157, s. 23. Who may be present at the counting of votes.

22. If from any cause any election provided for by this Act is not held as hereinbefore provided the benchers in convocation shall make provision for holding the same and fix the dates for the nomination and the other proceedings for taking, counting and recording the votes thereat and declaring the result thereof, and such proceedings shall, so far as practicable, be conformable with those provided by this Act. R.S.O. 1914, c. 157, s. 24. When election not held at proper time.

23. Upon the completion of the scrutiny and counting of the votes the secretary shall forthwith declare the result of the election as certified by the scrutineers and report the same to the Society, and shall cause the names of the persons elected to be published in the next issue of the *Ontario Gazette*. R.S.O. 1914, s. 157, s. 25. Declaration of result. Publication.

24. The benchers may make such regulations as they consider expedient, not contrary to the provisions of this Act, for regulating the procedure under the preceding sections, and for the remuneration of the scrutineers. R.S.O. 1914, c. 157, s. 26. Regulations for elections and remuneration to scrutineers.

25. Until after all petitions in respect to the election have been decided the voting papers relating to the election shall not be destroyed, but together with all other papers in connection with the election, shall be retained by the secretary. R.S.O. 1914, c. 157, s. 27. Preservation of voting papers.

26. No person shall sign the name of any other person to a voting paper, or alter, or add to, or falsify, or fill up any blank in a voting paper signed by another person, or deliver or cause to be delivered, or send or cause to be sent, by post or otherwise, to the secretary, a false voting paper or a voting paper which has been added to, or falsified or in which a blank has been filled up after the same was signed. R.S.O. 1914, c. 157, s. 28. False voting.

Absence of
secretary.

27. Where the office of secretary is vacant or if the secretary is unable from any cause to act at or in connection with an election, the treasurer shall appoint under his hand some other person to act as secretary *pro tempore*, and the person so appointed shall perform all the duties of the secretary, as prescribed by this Act. R.S.O. 1914, c. 157, s. 29.

Term of
office of
benchers.

28. The elected benchers shall take office at the first meeting following their election, and, subject to the provisions of this Act, shall hold office until their successors are elected. R.S.O. 1914, c. 157, s. 30, *part*.

Vacation of
seat for non-
attendance.

29.—(1) The seat of a bencher, other than an *ex-officio* bencher, who has failed to attend the meetings of the benchers for nine consecutive meetings shall at the expiration of that period *ipso facto* become vacant. R.S.O. 1914, c. 157, s. 31 (1), *part*.

Suspension
of certain
ex-officio
benchers for
non-payment
of fees.

(2) The right of any bencher who is such *ex-officio* by reason of having been elected at four quinquennial elections, to sit and vote at meetings of the benchers, shall be suspended if and while he is in default in payment of any fees to the Society. R.S.O. 1914, c. 157, s. 31 (2).

Committee
on election
petitions.

30. The benchers may appoint a committee to inquire with respect to the due election of any bencher whose election may be petitioned against by any member of the Bar who voted at the election, and, after such inquiry, to report such bencher as duly or not duly elected or qualified according to the fact, and, if necessary, to report the name of the candidate having the highest number of votes next after the candidate declared elected who had the lowest number of votes, in lieu of the person reported not duly elected or qualified; and, on the confirmation of the report by the benchers, other than persons petitioned against, present at any meeting called for that purpose, the person so reported in lieu of the person petitioned against shall be deemed to be the duly elected and qualified bencher. R.S.O. 1914, c. 157, s. 32, *part*.

Time for
filing election
petition.

31.—(1) A petition shall not be entertained unless it is filed with the secretary before the 10th day of May next succeeding the election, and contains a statement of the grounds on which the election is disputed, nor unless a copy thereof is served upon the bencher whose election is disputed before the 15th day of May; and no ground not mentioned in the petition shall be entertained on the hearing thereof. R.S.O. 1914, c. 157, s. 33 (1), *part*.

Hearing
petitions.

(2) The benchers, or the committee appointed for that purpose, shall before the last day of the said month, appoint a day for the hearing of the petition and give notice of such day to the petitioner and to the person whose election is disputed, and all such petitions shall be finally disposed of within

one month from the date of filing. R.S.O. 1914, c. 157, s. 33 (2), *part*.

32. The petitioner shall deposit with the secretary \$100 Deposit for costs. to meet any costs which the benchers petitioned against may in the opinion of the committee before which the petition is heard be put to; and the committee shall have power in the event of such petition being dismissed to award such a sum to be paid to the benchers petitioned against as in their opinion is just and shall have power in their discretion, in the event of it being decided that such benchers was not duly elected or qualified, to award costs to the petitioner; and the costs so awarded shall be recoverable in any court of competent jurisdiction. R.S.O. 1914, c. 157, s. 34. Power of committee as to costs.

33.—(1) The benchers shall, at their first meeting after the election, elect one of their number as treasurer, who shall be the president of the Society, and shall hold office until the appointment of his successor; and the election of treasurer shall take place in each year thereafter at such time as may be appointed by the rules of the Society. Election of treasurer. Duration of his office.

(2) The retiring treasurer shall be eligible for re-election. R.S.O. 1914, c. 157, s. 35. Retiring treasurer eligible.

34. In case of failure to elect the requisite number of duly qualified benchers under the provisions of this Act, or in case of any vacancy owing to the death or resignation of any benchers, or to any other cause, the remaining benchers shall, at the next regular meeting or at a meeting specially called for the purpose, supply the deficiency in the number of benchers, or fill the vacancy by electing any person or persons duly qualified under the provisions of this Act; and the person or persons so elected shall hold office until the next quinquennial election. R.S.O. 1914, c. 157, s. 36, *part*. Vacancies among benchers,—how filled up.

POWERS OF THE BENCHERS.

35. The benchers may make rules for the government of the Society, and other purposes connected therewith under the inspection of the visitors. R.S.O. 1914, c. 157, s. 37. Power to make rules.

36. The benchers may by rule fix or change the dates for the doing of any act, or the giving of any notice which by this Act is to be done or given in or with reference to any term, but no such rule shall have the effect of prolonging the term of office of any elected benchers. R.S.O. 1914, c. 157, s. 38, *part*. Changing dates for doing acts or giving notices.

37. On the hearing of an election petition or upon any inquiry by a committee the benchers or committee shall have power to examine witnesses under oath, and a summons under the hand of the treasurer, or under the hands of three benchers, for the attendance of a witness shall have all the force of Power to summon and examine witnesses.

a subpoena; and any witness not attending in obedience thereto shall be liable to attachment in the Supreme Court. R.S.O. 1914, c. 157, s. 39.

Appointment
of officers.

38. The benchers may appoint such officers and servants as they may deem necessary for the purposes of the Society. R.S.O. 1914, c. 157, s. 40.

Appointment
of examiners.

39. The benchers may appoint examiners to conduct the examination of students at law and of persons applying to be called to the bar or to be admitted as solicitors. R.S.O. 1914, c. 157, s. 41, *part*.

Legal
education.

40. The benchers may make rules for the improvement of legal education including the establishment and maintenance of a law school; appoint a dean and lecturers with salaries; impose fees and prescribe rules for the attendance of students and others at lectures and for examinations thereon, but not so as to reduce the number of years prescribed by statute for call to the bar or admission as solicitor, and may establish scholarships and prizes. R.S.O. 1914, c. 157, s. 42, *part*.

Call to the
bar.

41.—(1) The benchers may make such rules as they consider necessary for conducting the examination of persons applying to be called to the Bar and may call and admit to the practice of the law as a barrister any person duly qualified to be so called and admitted according to the provisions of law and the rules of the society. R.S.O. 1914, c. 157, s. 43 (1).

Admission
of women.

(2) The benchers may make rules providing for the admission of women to practise as barristers and solicitors. R.S.O. 1914, c. 157, s. 43 (2), *part*.

Rules for
examination
of candidates
for admission
as solicitors.

42.—(1) The benchers with the approbation of the visitors may make such rules as they consider necessary for conducting the examination of persons applying to be admitted as solicitors, touching the articles and service, and the certificates required to be produced by them before their admission, and as to the fitness and capacity of such persons to act as solicitors.

Suspending
decision.

(2) Where it appears to the benchers expedient for purposes of further inquiry or investigation, they may suspend, for a period not exceeding twelve months, their final decision in respect to granting or refusing a certificate. R.S.O. 1914, c. 157, s. 44.

Rules and
regulations
to meet
special cir-
cumstances.

43. The benchers may make rules and regulations, not contrary to law, and dispense therewith from time to time to meet the special circumstances of any special case respecting,—

- (a) the admission of students-at-law, the periods and conditions of study, the call or admission of barristers to practise the law, and all other matters relating to the discipline and honour of the Bar; Admission of students and call of barristers.
- (b) the service of students-at-law, the period and conditions of such service, and the admission of solicitors to practise in the Courts, and all other matters relating to the discipline and conduct of solicitors and students. R.S.O. 1914, c. 157, s. 45, *part*. Articled clerks and admission of solicitors.

44. No rule, regulation or by-law hereafter made by the benchers or the Society shall have any force or validity, or be dispensed with unless approved by the Lieutenant-Governor in Council. 1927, c. 28, s. 11. Approval by Lieutenant-Governor in Council.

45. Where a barrister, solicitor, or student-at-law is found by the benchers, after due inquiry by a committee of their number or otherwise, guilty of professional misconduct, or of conduct unbecoming a barrister, solicitor or student-at-law, the benchers may disbar any such barrister, or suspend him from practising as a barrister for such time as they may deem proper; may resolve that any such solicitor is unworthy to practise as a solicitor or that he should be suspended from practising for a period to be named in the resolution; may expel from the Society, and the membership thereof, such student and strike his name from the books of the Society; or may refuse either absolutely or for a limited period to admit such student to the usual examinations, or to grant him the certificate of fitness necessary to enable him to be admitted to practice. R.S.O. 1914, c. 157, s. 46, *part*. Powers of benchers to suspend, disbar or expel in case of misconduct.

46. Upon a barrister being disbarred, all his rights and privileges as a barrister shall thenceforth cease and determine, or, in case he is suspended, he shall, during the period of his suspension, possess no rights or privileges as a barrister, and notice of his being disbarred or suspended shall forthwith be given by the secretary to the senior Registrar of the Supreme Court. R.S.O. 1914, c. 157, s. 47. Barrister's privileges to cease when he is disbarred.

47. Where it has been resolved by the benchers that a solicitor is unworthy to practise a copy of the resolution shall forthwith be communicated to the senior registrar of the Supreme Court. R.S.O. 1914, c. 48 (1), *part*. Resolution of benchers.

48. Upon receipt of any notice under either of the two preceding sections an order shall be drawn up by the senior registrar of the Supreme Court without any formal motion striking such barrister or solicitor off the roll or suspending him, as may have been determined by the benchers, but any such order may be set aside or varied at any time by the court. R.S.O. 1914, c. 157, s. 48 (1), *part*. Suspending or striking off rolls.

Powers of visitors as to discipline vested in the benchers.

49. Any powers which the visitors of the Society may have in matters of discipline are hereby vested in the benchers, and the powers by the next preceding three sections conferred upon the benchers may be exercised by them without reference to or the concurrence of the visitors. R.S.O. 1914, c. 157, s. 49.

COUNTY LAW LIBRARIES.

Rules as to county law libraries.

50. The benchers may make regulations for promoting the efficiency of county law libraries, and may prescribe and enforce remedies for the violation thereof, and may by resolution of convocation cause to be dissolved any county law library association which neglects or refuses to comply with such regulations. R.S.O. 1914, c. 157, s. 50.

LAW BENEVOLENT FUND.

Widows' and orphans' fund.

51. The benchers may establish a fund for the benefit of the widows and orphans of barristers and solicitors, to be called "The Law Benevolent Fund," and may make all necessary rules and regulations for the management and investment of such fund, and the terms of subscription and appropriation thereof, and the conditions under which such widows and orphans shall be entitled to share in such fund. R.S.O. 1914, c. 157, s. 51.

REPORTERS.

Appointment of law reporters.

52.—(1) The benchers may appoint such person or persons, being members of the Society of the degree of barrister, as they may think proper to report and edit the decisions of the courts.

Tenure of office.

(2) Such person or persons shall hold office at the pleasure of the benchers, and shall be amenable to them in convocation, for the correct and faithful discharge of their duties according to such regulations as the benchers may make in respect thereof.

Benchers to make regulations regarding the reports.

(3) The benchers shall make regulations for printing and publishing the reports of such decisions, and the distribution of the reports and the price and mode of issuing the same, and all such other regulations in respect thereto as they may at any time consider necessary; and any profits arising from the reports shall form part of the general funds of the Society.

Salaries of reporters.

(4) The benchers shall determine the salaries to be allowed for such reporting and editing and shall pay the same out of the general funds of the Society. R.S.O. 1914, c. 157, s. 52.

REVENUE AND EXPENDITURE.

53. The fees payable by barristers on call to the Bar and annually, and by solicitors on admission, and for the annual certificate to practise, and by students on admission as such, and by them and others on examinations and attendance on lectures and readings, shall be paid into the general funds of the Society, and shall be such as the benchers may prescribe. R.S.O. 1914, c. 157, s. 53, *part*. Appropriation of certain fees.

54.—(1) The benchers may from time to time fix and adjust by rule the limits of the Society's financial year and shall cause the revenues and expenditures of the Society for each financial year as so fixed to be duly audited by an auditor appointed by the benchers to audit the accounts and report upon the finances of the Society. Power of benchers to fix limits of financial year.

(2) The statement, together with the report of the auditor, shall be furnished annually, within three months after the close of the financial year, to every member of the Society entitled to vote at an election of benchers. *See* R.S.O. 1914, c. 157, s. 54; 1915, c. 26, s. 2. Statement to be sent to members.

SCHEDULE.

FORM 1.

(*Section 15.*)

VOTING PAPER.

Law Society Election, 19

The appointed scrutineers for this election are Mr. _____ of _____, and Mr. _____ of _____.

I, _____, of the _____ in the _____ of _____, Barrister, do hereby declare—

1. That the signature hereto is in my proper handwriting.

2. That I vote for the following persons as Benchers of the Law Society:

A.B., of _____,	in the _____ of _____	
C.D., of _____,	in the _____ of _____	
etc.		etc.

3. That I have signed no other voting paper at this election.

4. That this voting paper is signed on the day of the date thereof.

Witness my hand, this _____ day of _____, 19 _____.

R.S.O. 1914, c. 157, sched. Form 1.

CHAPTER 193.

The Barristers Act.

Interpre-
tation.
"The
Soc'ety."

1. In this Act "The Society" shall mean The Law Society of Upper Canada. R.S.O. 1914, c. 158, s. 2.

Benchers
may make
rules as to
admission of
barristers

2. The benchers of the Law Society may make such rules, regulations or by-laws as shall to them seem necessary and proper touching the call or admission of any persons, being British subjects or residents of Ontario who have taken the oath of allegiance and have declared their intention to become British subjects, to practise at the Bar in His Majesty's courts of Ontario and such persons and no others shall be entitled to practise within the said courts, but no such rule, regulation or by-law shall have any force or validity unless approved by the Lieutenant-Governor in Council. 1927, c. 28, s. 12.

subject to
the approval
of the
Lieutenant-
Governor
in Council.

Admission of
solicitors to
practise at
the Bar.

3.—(1) Persons who have been duly admitted and enrolled as solicitors of the Supreme Court, and who have practised as solicitors in Ontario for the periods respectively hereinafter mentioned, and who are British subjects, may be admitted to practise at the Bar of His Majesty's Courts in Ontario on the terms and conditions hereinafter mentioned.

When solic-
itor has prac-
tised for ten
years.

(2) A solicitor who has been, previous to the time of filing his application for call, in actual practice for ten years or more shall be entitled to be called to the Bar without further examination.

When solicitor
has practised
for five
years

(3) A solicitor who has been, previous to the time of filing his application for call, in actual practice for five years or more, but less than ten years, shall be entitled to be called on passing such examination as may be required by the Society for such cases.

Solicitors
holding office
in Superior
Court.

(4) For the purpose of this section a solicitor holding any office in the Supreme Court or either division thereof to which he is appointed by the Crown, shall be deemed to have been in actual practice within the meaning of this Act while holding such office.

Notice of
application
by such
candidates.

(5) Notice of the intention of a candidate to apply for call, under the provisions of this section, shall be sufficient if written notice be given to the secretary of the Society as in the case of a student-at-law for call; and the notice of presentation to convocation shall be signed by a barrister practis-

ing in the county or district in which such candidate resides, and shall certify that the candidate is, in his opinion, a fit and proper person to be called to the Bar.

(6) Every such solicitor, before being called to the Bar, Fees. shall pay such fees only as are paid on call to the Bar in ordinary cases. R.S.O. 1914, c. 158, s. 4.

4. Any person who is or has been Minister of Justice of Canada or Solicitor-General of Canada shall be entitled to be called to the Bar of Ontario **without complying** with any of the rules of the Society as to admission, examinations, payment of fees or otherwise, and shall thereupon be entitled to practise at the Bar in His Majesty's Courts in Ontario. R.S.O. 1914, c. 158, s. 5. Call of Minister of Justice or Solicitor-General.

KING'S COUNSEL AND PRECEDENCE.

5. The Lieutenant-Governor may by letters patent under the Great Seal, appoint from the members of the Bar of Ontario such persons as he may deem proper to be, during pleasure, provincial officers under the name of "His Majesty's Counsel learned in the law" for Ontario. R.S.O. 1914, c. 158, s. 6, *part*. Appointment of King's Counsel.

6.—(1) From and after the time when this section comes into force no appointment of His Majesty's Counsel learned in the law shall be made by the Lieutenant-Governor in Council beyond the number of five in any one year, or twenty in any four years, save and except in the following cases:— Limit as to number of King's Counsel to be appointed.

(a) That of any person who may be appointed Minister of Justice or Solicitor-General of Canada, or Attorney-General of Ontario; Exceptions.

(b) That of any person appointed by the Governor-General in Council, for the Federal Courts, one of His Majesty's Counsel learned in the Law.

(2) Except in the cases mentioned in clauses *a* and *b* no person shall be so appointed who is not of at least ten years' standing at the Bar of Ontario. Qualifications of King's Counsel.

(3) This section shall not come into force until a day to be named by the Lieutenant-Governor by his proclamation. R.S.O. 1914, c. 158, s. 7. When this section shall come into force.

7. The following members of the Bar of Ontario shall have precedence in the Courts of Ontario in the following order:— Order of precedence at the Bar.

(a) The Minister of Justice of Canada for the time being;

(b) The Attorney-General of Ontario;

(c) The members of the Bar who have filled the office of Minister of Justice of Canada or Attorney-General of Ontario, according to seniority of appointment. R.S.O. 1914, c. 158, s. 8, *part*.

Patents of
precedence.

8. The Lieutenant-Governor, by letters patent under the Great Seal, may grant to any member of the Bar a patent of precedence in the Courts of Ontario. R.S.O. 1914, c. 158, s. 9.

Precedence
of King's
Counsel and
members
holding
patents of
precedence.
Precedence
of other
members of
the Bar.

9. King's Counsel for Ontario shall have precedence in the courts according to seniority of appointment unless otherwise provided in the letters patent. R.S.O. 1914, c. 158, s. 10, *part*.

10. The remaining members of the Bar shall, as between themselves, have precedence in the courts in the order of their call to the Bar. R.S.O. 1914, c. 158, s. 11.

Crown
Counsel.

11. Nothing in this Act shall affect or alter any rights of precedence which appertain to any member of the Bar when acting as Counsel for His Majesty, or for any Attorney-General of His Majesty, in any matter depending in the name of His Majesty or of the Attorney-General before the courts, but such right and precedence shall remain as if this Act had not been passed. R.S.O. 1914, c. 158, s. 12.

CHAPTER 194.

The Solicitors Act.

1. In this Act,

Interpreta-
tion.

- (a) "Rules of the Society" shall mean rules, regulations and by-laws made by the benchers of the Society under *The Law Society Act*;
"Rules of the Society."
Rev. Stat.
c. 192.
- (b) "The Society" shall mean The Law Society of Upper Canada. R.S.O. 1914, c. 159, s. 2, cls. (a. b).
"The Society."

2. Every solicitor shall be an officer of the Supreme Court; and that Court or any judge thereof, may exercise the same jurisdiction in respect of solicitors as a superior court or a judge thereof before the 22nd day of August, 1881, might have exercised in respect of any solicitor or attorney admitted to practise therein. R.S.O. 1914, c. 159, s. 5 (3), *part*.
Subject to control of court.

3. The benchers of the Law Society may make such rules, regulations or by-laws as shall to them seem necessary and proper touching the admission of any persons, being British subjects or residents of Ontario who have taken the oath of allegiance and have declared their intention to become British subjects, who may be admitted and enrolled as solicitors, and such persons and no others shall be entitled to practise as solicitors in Ontario, but no such rule, regulation or by-law shall have any force or validity unless approved by the Lieutenant-Governor in Council. 1927, c. 28, s. 13.
Benchers may make rules as to admission, etc., of solicitors.
Subject to the approval of the Lieutenant-Governor in Council.

4.—(1) Any person who has been duly called to the Bar of Ontario, and who has practised as a barrister in Ontario for the periods respectively hereinafter mentioned, may be admitted and enrolled as a solicitor on the terms and conditions hereinafter mentioned.
Admission of certain practising barristers as solicitors.

(2) Where, previous to the time of filing his application for a certificate of fitness, he has been in actual practice for ten years or more he shall be entitled to such certificate without any examination.
Of ten years' standing.

(3) Where, previous to the time of filing his application for certificate for fitness, he has been in actual practice for five years or more, but for less than ten years, he shall be entitled to the certificate on passing such examination as may be prescribed by the Society for such cases. R.S.O. 1914, c. 159, s. 7 (1-3).
Of five years' standing.

Notice of
application
for certificate
of fitness.

(4) Notice of the intention of the candidate to apply for a certificate of fitness under the provisions of this section shall be in writing signed by the applicant, and shall be given by him to the secretary of the Society at least fourteen days before the next meeting of convocation at which such candidate seeks admission; and the application for the certificate shall be signed by a barrister practising in the county or district in which such candidate resides, who shall certify that the candidate is, in his opinion, a fit and proper person to be admitted and enrolled as a solicitor.

Fees.

(5) Every such barrister, before obtaining the certificate, shall pay such fees only as are payable by a student-at-law in ordinary cases of being admitted as a solicitor. R.S.O. 1914, c. 159, s. 7 (4, 5), *part*.

Barristers
of Quebec
who have
been called
to the Bar
of Ontario.

5. A person who has been called to the Bar of Ontario under any provision heretofore or hereafter made for the admission of practitioners in law, or students, from the Province of Quebec shall be entitled to be admitted as a solicitor upon payment of the usual fees. R.S.O. 1914, c. 159, s. 9, *part*.

PROHIBITION AGAINST PRACTISING WHEN UNQUALIFIED.

Solicitors
must be
admitted
and
enrolled.

6. Unless admitted and enrolled and duly qualified to act as a solicitor, no person shall act as a solicitor in any court of civil or criminal jurisdiction or before any justice of the peace, or shall as such sue out any writ or process, or commence, carry on or defend any action, or proceeding in the name of any other person, or in his own name, or hold himself out as or represent himself to be a solicitor. R.S.O. 1914, c. 159, s. 3.

Penalty on
persons prac-
tising with-
out being
admitted as
solicitors.

7. If any person, unless himself a party to the proceeding, commences, prosecutes or defends in his own name, or that of any other person, any action or proceeding without having been admitted and enrolled as hereinafter provided, he shall be incapable of recovering any fee, reward or disbursements on account thereof, and shall be guilty of a contempt of the court in which such proceeding was commenced, carried on or defended, and punishable accordingly. R.S.O. 1914, c. 159, s. 4.

[As to practising in division courts see *The Division Courts Act*, Rev. Stat. c. 95, s. 102, and as to proceedings to enforce claims of lienholders for sums not exceeding \$100 under *The Mechanics' Lien Act*, see Rev. Stat. c. 173, s. 35 (6).]

SERVICE OF STUDENTS-AT-LAW.

8. Subject to the rules of the society under *The Law Society Act*, the following enactments are made with respect to the service of students-at-law:

Articled
clerks.
Rev. Stat.
c. 192.

- (a) The contract of service of a student-at-law and any assignment thereof, together with the affidavit of execution of such contract or assignment, which shall state the date of such execution, shall be filed within three months after the execution thereof respectively, in the Central Office of the Supreme Court and the proper officer shall endorse upon each document and sign a memorandum of the date of filing thereof;
- (b) If the contract of assignment with the affidavit of execution is not filed within three months after the date of the contract or assignment the same may nevertheless be filed, but the service of the clerk shall be reckoned only from the date of the filing, unless the benchers in their discretion for special reasons in any particular case, shall otherwise order;
- (c) A solicitor may have under contract in writing four students at one time and no more; and no solicitor shall have any student so bound after he has discontinued practice as a solicitor, nor while the solicitor is employed as a writer or clerk by any other solicitor, and the service by an articled clerk to a solicitor under any such circumstances shall not be deemed good service under the articles;
- (d) If a solicitor, before the determination of the contract of service, becomes bankrupt or takes the benefit of any Act for the relief of insolvent debtors, or has been imprisoned for twenty-one days, the Supreme Court, upon the application of the student, may order that the contract be discharged or be assigned to such person, upon such terms, and in such manner as the Court may deem proper;
- (e) If a solicitor, to whom a student has been so bound, dies before the expiration of the term for which the clerk became bound, or if he discontinues practice as a solicitor, or if the contract is by the consent of the parties cancelled, or if the student is legally discharged before the expiration of the term by an order of the Court, the student may be bound by another contract in writing to serve as student to any other practising solicitor during the residue of the term; and if an affidavit of the

Contracts of
service to
be filed.

Provision in
case contract
not filed in
three months

Practising
solicitor
may have
four articled
clerks and
no more.

Court may
order articles
to be dis-
charged or
assigned in
certain cases.

Case of
death, etc.,
of the
solicitor
to whom
clerk articled.

execution of such last mentioned contract is duly made and filed within the time and in the manner hereinbefore prescribed, and subject to the like regulations as in the case of the original contract and the affidavit of its execution, due service under such subsequent contract shall be sufficient. R.S.O. 1914, c. 159, s. 10, *part*.

CONDITIONS OF ADMISSION AS SOLICITORS.

Provisions
to be complied
with before
admission.

9.—(1) Subject to the rules of the society no student shall be admitted and enrolled as a solicitor unless,—

- (a) during the time specified in his contract of service he has duly served thereunder, and, except while attending the courses of lectures at the Law School and undergoing examinations as prescribed by the Rules of the Society, he has been during the whole of such term of service actually employed in the proper practice of a solicitor by the solicitor to whom he has been bound at the place where such solicitor has continued to reside, during such term or with his consent by the professional agent of the solicitor in Toronto; and
- (b) he has been examined and sworn in the manner hereinafter directed; and
- (c) at least fourteen days next before the first day of the term in which he seeks admission, he has left with the secretary of the Society his contract of service, and any assignment thereof and the affidavits of the execution of the same with his affidavit of due service thereunder, and a certificate of the solicitor to whom he was bound, or his Toronto agent of such due service, and in the case of a person who has been called to the Bar or taken a degree as hereinbefore mentioned, a certificate of his having been so called or taken such degree or a duly certified copy of such certificate.

Affidavits to
be delivered
to the
Society.

(2) The affidavits shall be in the form prescribed by the Society and shall be delivered by the applicant to the Society upon his application to be examined.

Provision in
case the con-
tract, etc.,
cannot be
produced.

(3) If the contract of service, assignment, if any, affidavits and certificate of due service, or any of them, cannot be produced the Society, on application by a petition verified by affidavit to be left with the secretary at least fourteen days before the first day of the term on which the applicant seeks admission, and on being satisfied of such fact may, in its discretion, dispense with the production of such contract, assignment, affidavits and certificate of due service, or any of them, and may, notwithstanding such non-production, grant the certificate of fitness.

(4) The benchers may allow a student, as part of his term of service, any time during which such student may have been employed on active military service. R.S.O. 1914, c. 159, s. 11, *part.* Time of clerk on military service may be allowed.

ADMISSION AND ENROLMENT.

10. Subject to the rules of the Society,—

Requirements.

- (a) where the benchers require that students shall pass a preliminary examination the term of service under articles to entitle a student to be admitted as a solicitor shall date only from the passing of such examination or his admission into the Society as a student-at-law; Preliminary examination.
- (b) no candidate for admission being a student-at-law or articulated clerk who has served under articles for the prescribed period shall be admitted or enrolled as a solicitor unless he has complied with the regulations of the Society as to the attendance at lectures and the passing of examinations. R.S.O. 1914, c. 159, s. 12, *part.* Attendance at lectures, examinations.

11.—(1) Subject to the rules of the Society no candidate for admission not being a student-at-law or articulated clerk who has served under articles for the prescribed period shall be admitted unless, Provisions respecting special cases.

- (a) he publishes in the *Ontario Gazette* for at least two months previously to the first day of the term in which he seeks admission notice of his intention to apply for admission;
- (b) nor, except in the case of a person who has been called to the Bar of Ontario, unless he, at least fourteen days after the meeting of convocation, leaves with the secretary of the Society;
 - (i) in the case of a barrister, sufficient evidence to the satisfaction of the benchers of his call to the Bar and an affidavit to their satisfaction stating whether any application is made or is pending to disbar him, disqualify him for misconduct, or otherwise from practising at the Bar;
 - (ii) in the case of an attorney, solicitor or writer to the signet, sufficient evidence to the satisfaction of the benchers of his admission and an affidavit of the candidate to their satisfaction stating whether any application has been made or is pending to strike him off the Roll or disqualify him for misconduct or otherwise from practising as a solicitor;

(iii) in every case testimonials of good character and conduct to the satisfaction of the benchers.

Date of
affidavit.

(2) The affidavit shall be made within three months of the meeting of convocation during which the application is made. R.S.O. 1914, c. 159, s. 13, *part*.

The Law
Society to
examine into
the fitness
and capacity
of candidates
for admission
as solicitors.

Rev. Stat.
c. 192.

Certificate
of fitness.

12. The benchers, upon proof to their satisfaction of the requirements of this Act having been complied with, shall examine and enquire by such ways and means as they think proper touching the fitness and capacity of any candidate for admission as a solicitor; and if satisfied by such examination, or by the certificate of the examiners mentioned in section 39 of *The Law Society Act*, that the candidate is duly qualified, fit and competent to act as a solicitor the Society shall give a certificate under its corporate seal of his due service, and of his fitness and capacity, and of his having duly complied with the requirements of this Act, and that he is in all respects qualified to be admitted as a solicitor. R.S.O. 1914, c. 159, s. 14.

Admission
and enrol-
ment.

13.—(1) Upon production to the Supreme Court of such certificate of fitness the presiding judge shall endorse his fiat of admission upon it; and thereupon the oath of allegiance and the oath of office having been administered in open Court to the person named in the certificate the Court may cause him to be admitted and his name to be enrolled as a solicitor.

Certificate of
admission.

(2) A certificate of admission shall be signed by one of the registrars of the Supreme Court, and the certificate of fitness shall be filed in the proper office of the Supreme Court.

Oath of
office.

(3) The oath of office shall be as follows:—

"I, A.B., do swear (*or solemnly affirm as the case may be*) that I will truly and honestly demean myself in the practice of a Solicitor according to the best of my knowledge and ability; So help me God."

R.S.O. 1914, c. 159, s. 15.

FEES.

Fees payable
under this
Act.

14. The following fees, and no other, shall be payable to the Crown under this Act:—

1. On filing articles or assignments (if any) with affidavit of execution, and making the endorsements required by this Act \$0 50
2. For fiat, admission, oath and certificate 5 50

R.S.O. 1914, c. 159, s. 16.

ANNUAL CERTIFICATES.

15. The officer of the Supreme Court who has the custody of the roll of solicitors shall, on the first day of every month, deliver to the secretary of the Society at its office in Osgoode Hall, certified under his hand and the seal of the Supreme Court, a copy of so much of the roll as contains the names of solicitors admitted to practise during the preceding month. R.S.O. 1914, c. 159, s. 17.

Names of those admitted to be delivered to Law Society monthly.

16. The secretary shall enter all such certified copies in a book to be kept in his office for that purpose, affixing to each name a number following in consecutive order the numbers affixed to the names previously entered. R.S.O. 1914, c. 159, s. 18.

Secretary to enter certified copies of roll in a book.

17. The secretary shall, in another book to be kept in his office for that purpose, enter all the names contained in the copies so transmitted to him, alphabetically arranged, with a reference to the number of each name on the roll; and shall, annually on or before the 1st day of February, furnish to the senior registrar of the Supreme Court an alphabetical list certified by him, under his hand, of all solicitors who have taken out their certificates for the current year, and shall from time to time add to such list the name of each solicitor who takes out a certificate at a subsequent period of the year, noting thereon the time when the certificate was taken out. R.S.O. 1914, c. 159, s. 19, *part*.

Secretary to annually post an alphabetical list of solicitors in his office and in Central Office.

18. Every practising solicitor whose name appears on the roll of solicitors shall obtain from the secretary, annually during the two weeks next preceding the last day of November, a certificate under the seal of the Society stating that he is a practising solicitor of the Supreme Court. R.S.O. 1914, c. 159, s. 20, *part*.

Annual certificate to be obtained by solicitors.

19. A certificate shall not be issued to a solicitor who is indebted to the society for any fee payable to the society, nor until the annual fee for each certificate prescribed by the rules of the society is paid. R.S.O. 1914, c. 159, s. 21.

Fees to be paid before certificate granted.

20. A solicitor admitted in or after November shall not be required to take out his annual certificate before November in the year next following the year of his admission. R.S.O. 1914, c. 159, s. 22, *part*.

Certificate not required until November after admission.

21. If a solicitor omits to take out his annual certificate within the prescribed period he shall not be entitled thereto until he pays to the society not only the prescribed certificate fee, together with any other fees which he owes to the Society, but also an additional sum by way of penalty, as follows:

Fine for neglect to take out certificate.

Amount of
fine.

If such certificate is not taken out before the first Monday in February, the sum of \$6; if not before the third Monday in May, the sum of \$9; and if not before the second Monday in September, \$12. R.S.O. 1914, c. 159, s. 23.

Solicitors,
etc., practis-
ing without
certificate to
forfeit \$40.

22. If a solicitor, or any member of a firm of solicitors, either in his own name or in the name of any member of his firm, practises in the Supreme Court, or in a county, or district court, or in a surrogate court without such certificate being taken out by him, and by each member of his firm, he shall forfeit the sum of \$40, which shall be paid to the Society, and may be recovered in the Supreme Court. R.S.O. 1914, c. 159, s. 24.

Further
penalty for
practising
without a
certificate.

23. If a solicitor practises in any such court without having taken out such certificate in each and every year of his practice he shall be liable to be suspended from practice by order of the Supreme Court for a period of not less than three nor more than six months, and shall continue so suspended until his certificate fee for the year in which he so practised, together with a penalty of \$40, is paid to the Society. R.S.O. 1914, c. 159, s. 25.

List by
officers
of court of
solicitors
practising
during the
preceding
year.

24. The officer having the control and superintendence of the Central Office, and every local registrar, and every deputy clerk of the Crown, and deputy registrar, and every clerk of a county or district court, and every registrar of the surrogate court, when the said offices are not held by the same person, shall, during the month of January in each year make out a list of the names of solicitors who, by the papers or proceedings filed or had in his office, appear to have practised at any time during the year ending with the 31st day of December next preceding, and shall, on or before the 1st day of February in the year next after that for which the list is made up, transmit such list certified under his hand and the seal of the court to the secretary of the Society. R.S.O. 1914, c. 159, s. 26.

Transmission
to Law
Society.

Disability
of solicitors
in prison
or sus-
pended.

25.—(1) A solicitor who is a prisoner in any gaol or prison shall not during his confinement therein, nor shall any solicitor who has been suspended from practising during the period of his suspension, commence, prosecute or defend as such solicitor any action in any court nor act in any matter in bankruptcy or insolvency.

Practitioner
guilty of
contempt.

(2) A solicitor so practising, and any solicitor permitting or empowering him so to practise in his name, shall be guilty of a contempt of the court in which any such proceedings are taken, and shall be punishable by such court accordingly.

Not to re-
cover fees.

(3) A solicitor shall be incapable of maintaining any action for the recovery of any fee, reward or disbursement for or in respect of any matter or thing done by him in his

own name or in the name of any other solicitor while so imprisoned or suspended. R.S.O. 1914, c. 159, s. 27.

26.—(1) A solicitor shall not knowingly act as the professional agent of any person not duly qualified to act as a solicitor, or suffer his name to be used in any such agency on account of or for the profit of an unqualified person, or send any process to such person, or do any other act to enable him to practise in any respect as a solicitor, knowing him not to be duly qualified. Solicitors not to act as agents of unqualified persons.

(2) If complaint is made in a summary way of a contravention of this section a judge of the Supreme Court, upon proof thereof, may order that the solicitor so offending shall be struck off the Roll and disqualified from practising as a solicitor. Punishment by striking off the Roll.

(3) The Court may also commit such unqualified person having so practised to the common gaol for any term not exceeding one year. R.S.O. 1914, c. 159, s. 28. Committal of unqualified person.

27. The Supreme Court may strike the name of any solicitor off the Roll of Solicitors for default by him in payment of money received by him as a solicitor. R.S.O. 1914, c. 159, s. 29. Court may strike solicitors off the Roll.

28.—(1) A solicitor shall not practise in any court in Ontario either in his own name or by his partner, deputy or agent, or in the name of any other person, or otherwise directly or indirectly, while he holds or conducts any office of the Supreme Court, or of a county or district court, a surrogate court or a division court to which he is appointed by the Crown; but nothing herein contained shall extend to a local master or deputy registrar of the Supreme Court who is not a deputy clerk of the Crown and pleas, or to the Official Guardian, or to an official referee, a drainage referee or an official arbitrator. Practice prohibited while holding certain offices.

(2) Every person who contravenes the provisions of this section shall incur a penalty of \$2,000. R.S.O. 1914, c. 159, s. 30. Penalty.

29. A solicitor shall not practise in any court in Ontario while he is engaged in the business of a merchant, or connected by partnership in purchasing or vending merchandise in the way of trade as a merchant, nor until twelve months after he has ceased to be such merchant or to be so engaged or connected. R.S.O. 1914, c. 159, s. 31. Practice prohibited while engaged as a merchant.

[For punishment for tampering with Jurors, see *The Jurors Act, Rev. Stat. c. 96.*]

STRIKING A SOLICITOR OFF THE ROLL FOR DEFECT IN ARTICLES.

Limitation
of time for
striking off
Roll for
defect in
articles.

30. Except in case of fraud no person admitted and enrolled shall be struck off the Roll on account of any defect in the articles of clerkship or in the filing thereof, or in his service thereunder or in his admission and enrolment, unless application for striking him off the Roll is made within twelve months next after his admission and enrolment. R.S.O. 1914, c. 159, s. 32.

PROCEEDINGS IF STRUCK OFF THE ROLL.

Notification
of the
Society when
solicitor
struck off
Roll.

Duty of
secretary.

31. Where a solicitor is struck off the Roll the Registrar shall certify the same under his hand and the seal of the Supreme Court to the secretary of the Society, stating whether such solicitor was struck off at his own request or otherwise, and the secretary shall attach the certificate to the certified copy of the Roll on which the name of such person stands, and shall, in the book kept by him, make a note opposite the name of such person of his having been struck off the Roll. R.S.O. 1914, c. 159, s. 33, *part*.

SOLICITORS' COSTS.

Solicitors to
deliver their
bill one
month before
bringing
action for
costs.

32.—(1) No action shall be brought for the recovery of fees, charges or disbursements for business done by a solicitor as such until one month after a bill thereof, subscribed with the proper hand of such solicitor, his executor, administrator or assignee or, in the case of a partnership, by one of the partners, either with his own name, or with the name of such partnership, has been delivered to the person to be charged therewith, or sent by the post to, or left for him at his counting-house, office of business, dwelling-house or last known place of abode, or has been enclosed in or accompanied by a letter subscribed in like manner, referring to such bill.

Not neces-
sary in first
instance in
action on
bill to prove
contents of
bill delivered

(2) In proving a compliance with this Act it shall not be necessary in the first instance to prove the contents of the bill delivered, sent or left, but it shall be sufficient to prove that a bill of fees, charges or disbursements subscribed as required by subsection 1, or enclosed in or accompanied by such letter, was so delivered, sent or left; but the other party may show that the bill so delivered, sent or left, was not such a bill as constituted a compliance with this Act. R.S.O. 1914, c. 159, s. 34.

Charges in
lump sum.

(3) A solicitor's bill of fees, charges or disbursements shall be sufficient in form if it contains a reasonable statement or description of the services rendered, with a lump sum charge or charges therefor, together with a detailed statement of disbursements, and in any action upon or taxation of such a bill if it is deemed proper further details of the services rendered may be ordered. 1920, c. 45, s. 2.

33. Where the retainer of the solicitor is not disputed, and there are no special circumstances, an order may be obtained on *præcipe* from the proper officer in the county in which the solicitor resides Order for taxation on præcipe.

- (a) by the client, for the delivery and taxation of the solicitor's bill;
- (b) by the client, for the taxation of a bill already delivered, within one month from its delivery;
- (c) by the solicitor, for the taxation of a bill already delivered, at any time after the expiration of one month from its delivery, provided no order for its taxation has been previously made. R.S.O. 1914, c. 159, s. 35.

34.—(1) No such reference shall be directed upon an application made by the party chargeable with such bill after a verdict or judgment has been obtained, or after twelve months from the time such bill was delivered, sent or left as aforesaid, except under special circumstances to be proved to the satisfaction of the court or judge to whom the application for the reference is made. No reference on application of party chargeable after verdict or after 12 months from delivery.

(2) Where the reference is made under subsection 1, the court or judge, in making the same, may give any special directions relative to the costs of the reference. R.S.O. 1914, c. 159, s. 36. Directions as to costs.

35. In case either party to a reference, having due notice, refuses or neglects to attend the taxation, the officer to whom the reference is made may tax the bill *ex parte*. R.S.O. 1914, c. 159, s. 37. When officer may tax bill ex parte.

36.—(1) When a client or other person obtains an order for the delivery and taxation of a solicitor's bill of fees, charges and disbursements, or a copy thereof, the bill shall be delivered within fourteen days from the service of the order. Delivery of bill and reference to taxation.

- (a) The bill delivered shall stand referred to the proper officer for taxation, and on the reference the solicitor shall give credit for, and an account shall be taken of all sums of money by him received from or on account of the client, and the solicitor shall refund what, if anything, he may on such taxation appear to have been overpaid;
- (b) The costs of the reference shall, unless otherwise directed, be in the discretion of the officer, subject to appeal, and shall be taxed by him when and as allowed;

- (c) The solicitor shall not commence or prosecute any action in respect to the matters referred pending the reference without leave of the court or a judge;
- (d) The amount certified to be due shall be paid forthwith after confirmation of the certificate by filing, as in the case of a master's report, by the party liable to pay the same;
- (e) Upon payment by the client or other person of what, if anything, may appear to be due to the solicitor, or if nothing is found to be due to the solicitor, the solicitor, if required, shall deliver to the client or other person, or as he may direct, all deeds, books, papers and writings in the solicitor's possession, custody or power belonging to the client;
- (f) The order shall be read as if it contained the above particulars, and shall not set forth the same, but may contain any variation therefrom and any other directions which the court or judge shall see fit to make.

Order presumed to contain clauses a to e

(2) An order for reference of a solicitor's bill for taxation shall be presumed to contain the clauses *a* to *e* of subsection 1, whether obtained on *præcipe* or otherwise, and by the solicitor, client or other person liable to pay the bill.

Reference to be to local taxing officer.

(3) The reference for taxation shall, unless otherwise ordered, be to the proper taxing officer for the county in which the solicitor resides. R.S.O. 1914, c. 159, s. 38.

When actions for costs within the month may be allowed.

37. A judge of the Supreme Court or of a county or district court, on proof to his satisfaction that there is probable cause for believing that the party chargeable is about to depart from Ontario, may authorize a solicitor to commence an action for the recovery of his fees, charges or disbursements against the party chargeable therewith, although one month has not expired since the delivery of the bill. R.S.O. 1914, c. 159, s. 39.

Taxation where a party not being the principal pays a bill of costs.

38.—(1) Where any person, not being chargeable as the principal party, is liable to pay or has paid any bill either to the solicitor, his assignee, or personal representative, or to the principal party entitled thereto, the person so liable to pay or paying, his assignee or personal representative, may apply to the Court for an order referring to taxation as the party chargeable therewith might himself have done, and the same proceedings shall be had thereupon as if the application had been made by the party so chargeable.

What special circumstances may be considered in such case.

(2) If such application is made where, under the provisions hereinbefore contained, a reference is not authorized to be made except under special circumstances, the Court

may take into consideration any additional special circumstances applicable to the person making it, although such circumstances might not be applicable to the party chargeable with the bill if he was the party making the application.

(3) For the purpose of such reference the Court may order the solicitor, his assignee or representative, to deliver to the party making the application a copy of the bill upon payment of the costs of the copy. Order for delivery of a copy of the bill.

(4) When a person, other than the client, applies for taxation of a bill delivered or for the delivery of a copy thereof for the purpose of taxation, and it appears that by reason of the conduct of the client the applicant is precluded from taxing the same, but is nevertheless entitled to an account from the client, it shall not be necessary for the applicant to bring an action for an account, but the Court may, in a summary manner, refer a bill already delivered or order delivery of a copy of the bill, and refer the same for taxation, as between the applicant and the client, and may add such parties not already notified as may be necessary. Taxation at instance of third person.

(5) The provisions of section 36, so far as they are applicable, shall apply to such taxation. R.S.O. 1914, c. 159, s. 40, *part*. Application of s. 36.

39. No bill previously taxed shall be again referred unless, under the special circumstances of the case, the Court thinks fit to direct a re-taxation thereof. R.S.O. 1914, c. 159, s. 41, *part*. When a bill may be re-taxed.

40. The payment of any bill shall not preclude the Court from referring it for taxation, if the application is made within twelve months after payment, and if the special circumstances of the case, in the opinion of the Court, appear to require the taxation. R.S.O. 1914, c. 159, s. 42, *part*. Payment not to preclude taxation if applied for within a year.

41. The bill of a solicitor for any fees, charges or disbursements in respect of business transacted in a surrogate court, may be directed to be taxed by the proper officer of such court. R.S.O. 1914, c. 62, s. 80, *part*. Taxation of costs.

42. Where a bill is referred for taxation, the officer to whom the reference is made may request the proper officer of any other court to assist him in taxing any part of such bill, and the officer so requested shall thereupon tax the same, and shall have the same powers and may receive the same fees in respect thereof as upon a reference to him by the court of which he is an officer, and he shall return the bill, with his opinion thereon, to the officer who so requests him to tax the same. R.S.O. 1914, c. 159, s. 43. A taxing officer may require the assistance of the officer of any other court.

How applications against solicitors to be intitled.

43. Every application to refer a bill for taxation, or for the delivery of a bill, or for the delivering up of deeds, documents and papers, shall be made *In the matter of (the solicitor)*; and upon the taxation of any such bill the certificate of the officer by whom the bill is taxed, unless set aside or varied, shall be final and conclusive as to the amount thereof, and payment of the amount certified to be due and directed to be paid may be enforced according to the practice of the court in which the reference was made. R.S.O. 1914, c. 159, s. 45.

JUDGES MAY MAKE RULES.

Judges of Supreme Court to make rules, etc.

44. The judges of the Supreme Court may, make general rules or regulations, other than rules relating to the admission and enrolment of solicitors, for carrying out the provisions of this Act. R.S.O. 1914, c. 159, s. 46, *part*.

Principles of remuneration in conveyancing matters. Imp. Act, 44-45 V. c. 44, s. 4.

45. Such rules may include rules respecting business by solicitors connected with sales, purchases, leases, mortgages, settlements and other matters of conveyancing, and may, as regards the mode of remuneration, prescribe that it shall be according to a scale of rates of commission or percentage, varying or not in different classes of business, or by a gross sum or by a fixed sum for each document prepared or perused without regard to length, or in any other mode or partly in one mode and partly in another or others; and may, as regards the amount of the remuneration, regulate the same with reference to all or any of the following among other considerations,—

- (a) the position of the party for whom the solicitor is concerned in any business, that is whether as vendor or as purchaser, lessor or lessee, mortgagor or mortgagee, and the like;
- (b) the place, district and circumstances at or in which the business or part thereof is transacted;
- (c) the amount of the capital money or of the rent to which the business relates;
- (d) the skill, labour and responsibility involved therein on the part of the solicitor; and
- (e) the number and importance of the documents prepared or perused, without regard to length. R.S.O. 1914, c. 159, s. 47.

What to be considered in taxation of costs.

46. In the absence of any general rule, and so far as any such general rules do not apply, the taxing officer, in taxing a bill for preparing and executing any instrument, shall consider not the length but the skill and labour employed and responsibility incurred in the preparation thereof. R.S.O. 1914, c. 159, s. 44.

AGREEMENTS BETWEEN SOLICITORS AND CLIENTS.

47. In this section and sections 48 to 65,Interpreta-
tion.

(a) "Client" shall include a person who, as a principal or on behalf of another person, retains or employs or is about to retain or employ a solicitor, and a person who is or may be liable to pay the bill of a solicitor for any services, fees, costs, charges or disbursements;

(b) "Services" shall include fees, costs, charges and disbursements. R.S.O. 1914, c. 159, s. 48.

48.—(1) Subject to the provisions of sections 49 to 65 a solicitor may make an agreement in writing with his client respecting the amount and manner of payment for the whole or a part of any past or future services in respect of business done or to be done by such solicitor, either by a gross sum or by commission or percentage, or by salary or otherwise, and either at the same rate or at a greater or less rate than that at which he would otherwise be entitled to be remunerated. In this subsection the expressions "commission" and "percentage" apply only to non-contentious business and to conveyancing.

Agreements
between
solicitors
and clients
as to com-
pensation.

(2) This section shall apply to and include any business to which section 46 relates, whether or not any general rule under section 45 is in operation. R.S.O. 1914, c. 159, s. 49.

Application
of section.

49. Where the agreement is made in respect of business done or to be done in any court, except a division court, the amount payable under the agreement shall not be received by the solicitor until the agreement has been examined and allowed by a taxing officer of a court having power to enforce the agreement. R.S.O. 1914, c. 159, s. 50.

Approval of
agreement
by taxing
officer.

50. Where it appears to the taxing officer that the agreement is not fair and reasonable he may require the opinion of a court to be taken thereon. R.S.O. 1914, c. 159, s. 51, *part*.

Opinion of
court on
agreement.

51. The court may either reduce the amount payable under the agreement or order it to be cancelled and the costs, fees, charges and disbursements in respect of the business done to be taxed in the same manner as if the agreement had not been made. R.S.O. 1914, c. 159, s. 52, *part*.

Rejection of
agreement
by court.

52. Such an agreement shall not affect the amount, or any right or remedy for the recovery, of any costs recoverable from the client by any other person, or payable to the client by any other person, and any such other person may require any costs payable or recoverable by him to or from

Agreement
not to affect
costs as be-
tween party
and party.

the client to be taxed in the ordinary manner, unless such person has otherwise agreed; but the client who has entered into the agreement shall not be entitled to recover from any other person under any order for the payment of any costs, which are the subject of the agreement, more than the amount payable by the client to his own solicitor under the agreement. R.S.O. 1914, c. 159, s. 53.

Claims for additional remuneration excluded.

53. Such an agreement shall exclude any further claim of the solicitor beyond the terms of the agreement in respect of services in relation to the conduct and completion of the business in respect of which it is made, except such as are expressly excepted by the agreement. R.S.O. 1914, c. 159, s. 54.

Agreements relieving solicitor from liability for negligence void.

54. A provision in any such agreement that the solicitor shall not be liable for negligence or that he shall be relieved from any responsibility to which he would otherwise be subject as such solicitor shall be wholly void. R.S.O. 1914, c. 159, s. 55.

Determination of disputes under the agreement.

55. No action shall be brought upon any such agreement, but every question respecting the validity or effect of it may be examined and determined, and it may be enforced or set aside without action on the application of any person who is a party to the agreement or who is or is alleged to be liable to pay or who is or claims to be entitled to be paid the costs, fees, charges or disbursements, in respect of which the agreement is made, by the court, not being a division court, in which the business or any part of it was done or a judge thereof, or, if the business was not done in any court, by the Supreme Court. R.S.O. 1914, c. 159, s. 56, *part*.

Enforcement of agreement.

56. Upon any such application, if it shall appear to the court that the agreement is in all respects fair and reasonable between the parties, it may be enforced by such court by order in such manner and subject to such conditions as to the costs of the application as such court may think fit, but if the terms of the agreement shall not be deemed by the court to be fair and reasonable the agreement may be declared void, and the court may order it to be cancelled and may direct the costs, fees, charges and disbursements incurred or chargeable in respect of the matters included therein to be taxed in the ordinary manner. R.S.O. 1914, c. 159, s. 57, *part*.

Order of court for re-opening of agreement.

57. Where the amount agreed for under any such agreement has been paid by, or on behalf of the client or by any person chargeable with or entitled to pay the same, the Supreme Court may, upon the application of the person who has paid such amount, within twelve months after the payment thereof, if it appears to such Court that the special cir-

cumstances of the case require the agreement to be re-opened, re-open the same and order the costs, fees, charges and disbursements to be taxed, and may also order the whole or any part of the amount received by the solicitor to be repaid by him on such terms and conditions as to the Court may seem just. R.S.O. 1914, c. 159, s. 58, *part*.

58. Where any such agreement is made by the client in the capacity of guardian or of trustee under a deed or will, or of committee of any person whose estate or property will be chargeable with the amount or any part of the amount payable under the agreement, the agreement shall, before payment, be laid before the Senior Taxing Officer at Toronto who shall examine it and may disallow any part of it or may require the direction of the court to be made thereon. R.S.O. 1914, c. 159, s. 59, *part*.

Agreements made by client in fiduciary capacity to be approved by taxing officer.

59. If the client pays the whole or any part of such amount without the previous allowance of such officer or the direction of the court he shall be liable to account to the person whose estate or property is charged with the amount paid or any part of it for the amount so charged, and the solicitor who accepts such payment may be ordered by the court to refund the amount received by him. R.S.O. 1914, c. 159, s. 60, *part*.

Client paying without approval to be liable to estate.

60. Nothing in sections 48 to 65 shall give validity to a purchase by a solicitor of the interest or any part of the interest of his client in any action or other contentious proceeding to be brought or maintained, or give validity to an agreement by which a solicitor retained or employed to prosecute any action or proceeding stipulates for payment only in the event of success in such action or proceeding, or where the amount to be paid to him is a percentage of the amount or value of the property recovered or preserved or otherwise determinable by such amount or value or dependent upon the result of the action or proceeding. R.S.O. 1914, c. 159, s. 61.

Solicitors not to purchase any interest in litigation or to make payment dependent upon success.

61. Where a solicitor has made such an agreement and anything has been done by him under it and before the agreement has been completely performed by him, such solicitor dies or becomes incapable to act, an application may be made to any court which would have jurisdiction to examine and enforce the agreement by any person who is a party thereto, and such court may thereupon enforce or set aside the agreement so far as the same may have been acted upon as if such death or incapacity had not happened, and if it deems the agreement to be in all respects fair and reasonable may order the amount in respect of the past performance of it to be ascertained by taxation; and the taxing officer, in ascertaining such amount, shall have regard, so far as may be, to the

Where solicitor dies or becomes incapable of acting after agreement.

terms of the agreement, and payment of the amount found to be due may be ordered in the same manner as if the agreement had been completely performed by the solicitor. R.S.O. 1914, c. 159, s. 64.

Changing
solicitor
after making
agreement.

62. If, after any such agreement has been made, the client shall change his solicitor before the conclusion of the business to which the agreement relates, which he shall be at liberty to do notwithstanding the agreement, the solicitor, party to the agreement, shall be deemed to have become incapable to act under it within the meaning of the next preceding section, and upon any order being made for taxation of the amount due him in respect to the past performance of the agreement the court shall direct the taxing officer to have regard to the circumstances under which such change of solicitor took place, and upon the taxation the solicitor shall not be deemed to be entitled to the full amount of the remuneration agreed to be paid to him, unless it shall appear that there has been no default, negligence, improper delay or other conduct on his part affording reasonable ground to the client for such change of solicitor. R.S.O. 1914, c. 159, s. 65.

Bills under
agreement
not to be
liable to
taxation.

63. Except as otherwise provided in sections 48 to 62 and sections 64 and 65 a bill of a solicitor for the amount due under any such agreement shall not be subject to any taxation or to any provision of law respecting the signing and delivery of a bill of a solicitor. R.S.O. 1914, c. 159, s. 66.

Security
may be given
to solicitor
for costs.

64. A solicitor may accept from his client, and a client may give to his solicitor, security for the amount to become due to the solicitor for business to be transacted by him and for interest thereon, but so that the interest is not to commence until the amount due is ascertained by agreement or by taxation. R.S.O. 1914, c. 159, s. 62.

Interest on
disburse-
ments and
costs.

65. A solicitor may charge interest at the rate of five per centum per annum on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from demand from the client, and where the same are payable by an infant or out of a fund presently available the demand may be made on the parent or guardian or the trustee or other person liable. R.S.O. 1914, c. 159, s. 63.

SOLICITORS AS MORTGAGEES, TRUSTEES, ETC.

Definition
of mortgage.

66. In sections 67 to 69 the expression "mortgage" includes any charge on any property for securing money or money's worth. R.S.O. 1914, c. 159, s. 67.

Charges, etc.,
where mort-
gage is made
with solic-
itor.

67. Any solicitor to whom, either alone or jointly with any other person, a mortgage is made, or the firm of which

such solicitor is a member, shall be entitled to receive for all business transacted and acts done by such solicitor or firm in negotiating the loan, deducing and investigating the title to the property and preparing and completing the mortgage, all such usual professional charges and remuneration as he or they would have been entitled to receive if such mortgage had been made to a person not a solicitor, and such person had retained and employed such solicitor or firm to transact such business and do such acts; and such charges and remuneration shall accordingly be recoverable from the mortgagor. R.S.O. 1914, c. 159, s. 68 (1).

Imp. Act. 58-59 Vic. c. 25.

68. Any solicitor to or in whom, either alone or jointly with any other person, any mortgage is made or is vested by transfer or transmission, or the firm of which such solicitor is a member, shall be entitled to receive and recover from the person on whose behalf the same is done or to charge against the security for all business transacted and acts done by such solicitor or firm subsequent and in relation to such mortgage or to the security thereby created or the property therein comprised, all such usual professional charges and remuneration as he or they would have been entitled to receive if such mortgage had been made to and had remained vested in a person not a solicitor, and such person had retained and employed such solicitor or firm to transact such business and do such acts, and accordingly no such mortgage shall be deemed except upon payment of such charges and remuneration. R.S.O. 1914, c. 159, s. 69 (1).

Right of solicitor with whom mortgage is made to recover costs, etc.

Imp. Act, 58-59 V. c. 25.

69. A solicitor, who is a director of a trust company or of any other company, or the firm of which such solicitor is a member, shall be entitled to receive for all business transacted or acts done by such solicitor or firm for such company in relation to or in connection with any matter in which the company acts as trustee, guardian, personal representative or agent, all such usual professional fees and remuneration as he or they would be entitled to receive if such solicitor had not been a director of such company, and such company had retained and employed such solicitor or firm to transact such business and do such acts, and such charges and remuneration shall accordingly be recoverable from such company, and may be charged by them as a disbursement in the matter of such trusteeship, guardianship, administration or agency. R.S.O. 1914, c. 159, s. 70.

Solicitor-director, a right to charge for services to trust estate.

RIGHT TO TAX COSTS OF SALARIED SOLICITOR.

70. Where the remuneration of a solicitor or counsel employed by a corporation is wholly or partly paid by salary the corporation employing such solicitor or counsel shall

Collection of costs where corporation solicitor or counsel receives salary.

notwithstanding have the right to recover and collect lawful costs in all actions and proceedings in the same manner as if the solicitor or counsel were not receiving a salary where the costs are by the terms of his employment payable to the solicitor or counsel as part of his remuneration in addition to his salary. R.S.O. 1914, c. 159, s. 71.

SOLICITORS AS OFFICERS OF COURT.

Saving
jurisdiction
of court.

71. Nothing in this Act shall interfere with the jurisdiction over solicitors as officers of court. R.S.O. 1914, c. 159, s. 72.

2. NOTARIES PUBLIC.

CHAPTER 195.

The Notaries Act.

1. Subject to the provisions of section 5 the Lieutenant-Governor may by commission appoint such persons as he thinks fit notaries public for Ontario. R.S.O. 1914, c. 160, s. 2. Appointment.

2. A notary shall during pleasure have, use and exercise the power of drawing, passing, keeping and issuing all deeds and contracts, charter-parties and other mercantile transactions in Ontario, and also of attesting all commercial instruments that may be brought before him for public protestation, and otherwise of acting as is usual in the office of notary, and may demand, receive and have all the rights, profits and emoluments rightfully appertaining and belonging to the calling of a notary public. R.S.O. 1914, c. 160, s. 3. Powers of notaries.

3. A notary public shall be *ex officio* a commissioner for taking affidavits in and for every county and district in Ontario. 1927, c. 28, s. 14. Power to take affidavits.

4. A notary public shall be deemed to be an officer of the Supreme Court. R.S.O. 1914, c. 160, s. 5. Officers of Court.

5.—(1) Any person, other than a barrister or solicitor, desirous of being appointed a notary public, shall be subject to examination in regard to his qualification for the office by the judge of the county or district court of the county or district in which he resides, or by such other person as may be appointed in that behalf by the Lieutenant-Governor; and no such person shall be appointed a notary public without a certificate from such judge, or such other person, that he has examined the applicant and finds him qualified for the office, and that in his opinion a notary public is needed for the public convenience in the place where the applicant resides and intends to carry on business. Examination as to qualification of a lay-man desirous of being appointed notary public.

Regulations.

(2) The Lieutenant-Governor in Council may make regulations for such examination and certificate; and the judge or other person examining shall be entitled to receive from the person examined a fee of \$5 for the examination. R.S.O. 1914, c. 160, s. 6.

Fee to examiner.

Restrictions in case of lay appointees.

6. Where a person, other than a barrister or solicitor, is appointed a notary public restrictions may be imposed in the commission limiting the territory and cases in which such person may use and exercise his powers. R.S.O. 1914, c. 160, s. 7.

Notary public need not affix seal on affidavits, etc.

7. Where, under the authority of any Act of Ontario, a notary public is authorized to administer oaths or to take affidavits or declarations within Ontario it shall not be necessary to the validity of any such oath, affidavit or declaration that he shall affix his seal thereto. R.S.O. 1914, c. 160, s. 8.

3. *MEDICAL PROFESSION.*

CHAPTER 196.

The Medical Act.

1. "The College of Physicians and Surgeons of Ontario," hereinafter called "the College," is continued as a body corporate, with power to acquire, hold and dispose of real and personal property for the purposes of this Act. R.S.O. 1914, c. 161, s. 2. College of Physicians and Surgeons continued.

2. Every person registered, as a legally qualified medical practitioner under any Act heretofore passed or under this Act shall be a member of the College. R.S.O. 1914, c. 161, s. 3. Members thereof under former Acts.

3.—(1) There shall continue to be a council of the College hereinafter called "the Council," to be composed as follows:— Council of the College of Physicians and Surgeons. Representatives of certain Colleges.

(a) one member to be chosen from each of the Universities, Colleges and other bodies hereinafter designated, to wit: The University of Toronto, the Queen's University and College of Kingston, the University of Victoria College, the University of Trinity College, the Royal College of Physicians and Surgeons, Kingston, the Toronto School of Medicine, Trinity Medical School, the Ottawa University, Regiopolis College, the Western University, and of every other University, College or body in the Province now by law authorized, or which may be hereafter authorized to grant degrees in medicine and surgery, and which establishes and maintains to the satisfaction of the College of Physicians and Surgeons of Ontario, a Medical Faculty in connection therewith. R.S.O. 1914, c. 161, s. 4 (1) (a); 1914, c. 2, sched. (28).

(b) five members to be duly elected by the licensed practitioners in homœopathy who have been registered under this Act, or under the provisions in that behalf of any of the Acts mentioned in section 2 of this Act; Representatives of homœopathy.

(c) eighteen members to be elected in the manner hereinafter provided from amongst and by the registered members of the profession other than those mentioned in the preceding clauses of this section. R.S.O. 1914, c. 161, s. 4 (1), (b, c). Elected members.

No teacher, etc., in College to be a member except as representative of his College.

Members of the Council to be registered practitioners.

Residence in division.

(2) No teacher, professor or lecturer of any of the bodies mentioned in subsection 1 shall hold a seat in the Council except as a representative of the body to which he belongs.

(3) Every member of the Council, appointed under subsection 1 shall be a legally qualified medical practitioner.

(4) Each of the eighteen members to be elected as aforesaid shall be a resident of the territorial division for which he is elected, and any member who, during the term for which he is elected, ceases to reside in the division for which he is elected shall thereby vacate his office as such member.

Elections, how to be conducted.

(5) One member shall be so elected from each of the territorial divisions mentioned in Schedule A to this Act by the registered practitioners of medicine resident in such division; and the manner of holding such election shall, with respect to the time thereof and the taking the votes therefor, be determined by a by-law to be passed by the Council; and in default of such by-law being made, then the Lieutenant-Governor shall prescribe the time and manner of holding such election. R.S.O. 1914, c. 161, s. 4 (2-5).

Membership for four years.

Death or resignation provided for.

4.—(1) The members of the Council shall be elected or appointed, as the case may be, for a period of four years; but any member may resign at any time by letter addressed to the president or registrar of the Council; and upon the death or resignation of any member of the Council, it shall be the duty of the registrar forthwith to notify the body in respect to which the vacancy has occurred, of the death or resignation, and such body shall have the power to nominate another duly qualified person to fill the vacancy; or if the vacancy be caused by the death or resignation of any member elected from a territorial division, or by his becoming disqualified owing to his having ceased to reside therein, or in case a new election is requisite on account of a decision of the judge upon a contested election, the registrar shall forthwith cause a new election to be held in such territorial division, and the election shall be conducted in accordance with the by-laws and regulations of the Council, but it shall be lawful for the Council during such vacancy to exercise the powers hereinafter mentioned.

Vacancies in respect of homeopathic members of the Council.

(2) In the event of the death or resignation of any member of the Council representing the practitioners of the homeopathic system of medicine, the remaining representatives of the homeopathic system in the Council may fill such vacancy by selecting from amongst the duly registered practitioners in homeopathy a person to fill the vacancy.

Notice of date for nomination.

(3) The registrar shall, not more than sixty nor less than forty days before the time for receiving nominations for any election under this Act, notify, by letter or post card, every registered medical practitioner in Ontario of the date of receiving such nominations. R.S.O. 1914, c. 161, s. 5.

5. The persons entitled to vote under this Act at any election shall be all duly registered practitioners. R.S.O. 1914, c. 161, s. 6. Persons entitled to vote.

6.—(1) Any member of the College may have his name transferred from one class of voters to any other class on his presenting to the registrar a certificate duly signed by the member or members of the board of examiners appointed by the Council to examine candidates on the subjects specified in this Act, as peculiar to each school of medicine, testifying that the member so applying to have his name so transferred has shown a sufficient knowledge of the system of medicine with which he desires to connect himself, to entitle him to be admitted to the class to which he desires to be transferred and on being so admitted he shall be entitled to vote in that class only. Transfer to different class on voters' list.

(2) There shall be payable to the registrar for such transfer a fee of \$2. Fee on transfer.

(3) No member shall, without the sanction of the Council, be entitled to return to the class from which he has been so transferred; and no member shall at any time be entitled to vote in more than one class of the voters who, in accordance with the provisions of this Act, vote in the election of the members of the Council. R.S.O. 1914, c. 161, s. 7. Return of voter to former class. Not to vote in more than one.

7. In case of any doubt or dispute as to the legality of the election of any member of the Council, it shall be lawful for the Council to hold an inquiry and decide who is the legally elected member of the Council; and the person whom they decide to have been elected shall be and be deemed to be the member legally elected; and if the election is found to have been illegal the Council shall have power to order a new election. R.S.O. 1914, c. 161, s. 8. Disputed elections, how dealt with.

8.—(1) In case the validity of the election of any member of the Council is contested, the same shall be tried by the judge or junior or acting judge of the county or district court of the county or district in which the person whose election is complained of resides, and the proceedings thereon shall *mutatis mutandis* be the same as nearly as may be, as in the case of municipal elections under the sections of *The Municipal Act*, relating to controverted elections, but no security by the complainant shall be necessary. Controverted elections. Rev. Stat. c. 233.

(2) Any person qualified to vote at the election complained of may be the relator in proceedings under this section. Who may be relator.

(3) The decision of the judge shall be final. R.S.O. 1914, c. 161, s. 9. Decision final.

9.—(1) The Council may make rules and regulations as to the times and places of meetings of the Council, and the mode of summoning the same; and in the absence of any Meetings of the Council.

rule or regulation as to the summoning of meetings the president or, in the event of his absence or death, the registrar may summon a meeting to be held at such time and place as to him seems fit, by circular letter mailed to each member.

Absence of
president.

(2) In the event of the absence of the president from any meeting, the vice-president or, in his absence, some other member to be chosen from among the members present shall act as president.

Majority.

(3) All questions shall be decided by the majority of the members present, and nine members shall form a quorum of the Council.

Voting.

(4) At all meetings the president for the time being shall have a casting vote. R.S.O. 1914, c. 161, s. 10.

Payment to
members of
the Council.

10. There shall be paid to the members of the Council such fees for attendance, and such reasonable travelling expenses, as may be fixed by by-law of the Council. R.S.O. 1914, c. 161, s. 11.

Appointment
of officers.

11. The Council shall annually appoint a president, vice-president, registrar, treasurer and such other officers as may from time to time be necessary for giving effect to this Act, who shall hold office during the pleasure of the Council; and the Council may fix the salaries or fees to be paid to such officers, and to the board of examiners hereinafter mentioned. R.S.O. 1914, c. 161, s. 12.

Salaries.

Executive
Committee.

12. The Council shall appoint annually from among its members an executive committee, to take cognizance of, and action upon, all such matters as may be delegated to it by the Council or as may require immediate interference or attention between the adjournment of the Council and its next meeting; and all such acts shall be valid only until the next ensuing meeting of the Council; but the committee shall have no power to alter, repeal or suspend any by-law of the Council. R.S.O. 1914, c. 161, s. 13.

DIVISION ASSOCIATIONS.

Territorial di-
vision medical
associations.

13.—(1) In each of the territorial divisions described in Schedule "A" of this Act there may be established a territorial division medical association, which may be called the division association of such division.

Membership.

(2) Every member of the College resident within the territorial division, shall be a member of the division association; and the representative elected to the Council for the territorial division shall be *ex-officio* chairman of the division association. R.S.O. 1914, c. 161, s. 14.

MEDICAL EDUCATION.

14.—(1) The Council shall have power and authority to ^{Matriculation or preliminary examinations.} appoint examiners for the admission of all students to the matriculation or preliminary examination, and may make by-laws and regulations for determining the admission and enrolment of students; but any change in the curriculum of studies fixed by the Council shall not come into effect until one year after such change is made.

(2) Until a homœopathic medical college for teaching ^{Homœopathicists.} purposes is established in Ontario, candidates wishing to be registered as homœopathists shall pass the matriculation examination established under this Act, as the preliminary examination for all students in medicine, and shall present evidence of having spent the full period of study required by the curriculum of the Council, under the supervision of a duly registered homœopathic practitioner.

(3) Such candidates must also have complied with the full ^{Compliance with curriculum.} curriculum of studies, prescribed from time to time by the Council for all medical students, but the full time of attendance upon lectures and hospitals required by the curriculum of the Council, may be spent in such homœopathic medical colleges in the United States of America or in Europe as may be recognized by a majority of the homœopathic members of the Council; but in all homœopathic colleges, where the winter course of lectures is only four months' duration, certified tickets of attendance on one such course shall be held to be equivalent to two-thirds of one six months' course, as required by the Council; and when such teaching body has been established in Ontario it shall be optional for such candidates to pursue in part or in full the required curriculum in Ontario. R.S.O. 1914, c. 161, s. 15.

15. The Council may make by-laws as to the terms upon ^{Council may recognize certificates of foreign institutions.} which it will receive the matriculation and other certificates of colleges and other institutions not in Ontario. R.S.O. 1914, c. 161, s. 16.

16.—(1) Graduates in arts of any university in His ^{Graduates of universities in His Majesty's dominions.} Majesty's Dominions shall not be required to pass the preliminary examination.

(2) Where the Council adopts a lower standard for matriculation than graduation in arts, such standard shall conform ^{Standard for matriculation.} to the curriculum of the universities in the Province for the academic year to which such standard applies, or to the course of study prescribed for junior or senior matriculation in arts. R.S.O. 1914, c. 161, s. 17.

Curriculum
of studies.

17. The Council may prescribe a curriculum of studies to be pursued by the students, and such curriculum of studies shall be observed and taught by all bodies referred to in section 3. R.S.O. 1914, c. 161, s. 18.

MEDICAL REGISTRATION.

Registration.

18.—(1) The Council shall cause to be kept by the registrar a book or register, in which shall be entered the name of every person registered according to the provisions of this Act; and, the names of all persons who have complied with the enactments hereinafter contained, and with the rules and regulations made or to be made by the Council respecting the qualifications to be required from practitioners of medicine, surgery and midwifery in this Province.

Only registered
persons to
practise.

(2) Those persons only whose names are inscribed in the book or register mentioned in subsection 1, shall be deemed to be qualified and licensed to practise medicine, surgery or midwifery in Ontario, except as hereinafter provided.

Inspection of
register.

(3) The book or register shall at all times be open, and subject to inspection by any duly registered practitioner in Ontario, or by any other person. R.S.O. 1914, c. 161, s. 19.

Registrar to
keep register
correct.

19.—(1) The registrar shall keep the register correct and in accordance with this Act, and the orders and regulations of the Council, and shall erase the names of all registered persons who have died, and make the necessary alterations in the addresses and qualifications of the persons registered under this Act.

Written
enquiry by
registrar.

(2) To enable the registrar duly to fulfil the duties imposed upon him, he may, by letter sent by registered post addressed to any registered person according to his address on the register, inquire whether such person has ceased to practise or has changed his residence, and if no answer to such letter is received within the period of six months from the mailing thereof the registrar may erase the name of such person from the register; but such name shall be restored to the register on compliance with the other provisions of this Act. R.S.O. 1914, c. 161, s. 20.

Admitting
medical
practitioners
registered
in Great
Britain.

20.—(1) The council may admit to registration medical practitioners duly registered in The Medical Register of the United Kingdom, or in any register of persons entitled to practise in any part of the British Empire, upon such terms and conditions as the council may from time to time deem expedient, having regard not only to the qualification of applicants for registration, but also to such rules, regulations and conditions as may be from time to time in force regarding the reciprocal admission to The Medical Register of the United

Kingdom or other register as aforesaid of medical practitioners registered according to the provisions of this Act. 1915, c. 27, s. 2; 1916, c. 24, s. 24.

(2) Any medical practitioner legally qualified according to the laws of the Province of Manitoba, who was at and before the date of the Order of Her late Majesty Queen Victoria in Council with respect to the westerly boundary of Ontario residing and practising in the territory now constituting the Districts of Rainy River and Kenora, and who, on the 4th day of May, 1894, still resided in that territory shall, upon production of a certificate of qualification to practise medical surgery and midwifery from "The College of Physicians and Surgeons of Manitoba," be entitled to be registered as a practitioner of medicine, surgery and midwifery in the said districts without the payment of any fee for being registered or undergoing an examination, but subject to the other conditions and regulations applicable to the medical profession in Ontario. R.S.O. 1914, c. 161, s. 21 (2).

21. Every person who possesses any one or more of the qualifications described in Schedule "B" to this Act, attained prior to the 23rd day of July, 1870, shall, on payment of a fee to be fixed by by-law of the Council, not exceeding \$10, be entitled to be registered on producing to the registrar the document conferring or evidencing the qualification or each of the qualifications in respect whereof he seeks to be so registered, or upon transmitting by post to the registrar, information of his name and address, and evidence of the qualification or qualifications in respect whereof he seeks to be registered, and of the time or times at which the same was or were respectively attained; but no one registered under the Acts mentioned in section 2 of this Act shall be liable to pay any fee for being registered under this Act. R.S.O. 1914, c. 161, s. 22.

22. Every person desirous of being registered under the provisions of this Act, and who had not become possessed of any one of the qualifications in Schedule B mentioned, before the 23rd of July, 1870, shall, before being entitled to registration, present himself before the Board of Examiners, mentioned in section 24, for examination as to his knowledge and skill for the efficient practice of his profession; and upon passing the examination required, and proving to the satisfaction of the board of examiners, that he has complied with the rules and regulations made by the Council, and on the payment of such fees as the Council may by general by-law establish, such person shall be entitled to be registered, and to practice medicine, surgery and midwifery in Ontario. R.S.O. 1914, c. 161, s. 23.

23. When and as soon as it appears that there has been established in any other Province of the Dominion of Canada a central examining board similar to that constituted

Manitoba
practitioners
in Rainy River
before settle-
ment of
boundary to
be entitled to
registration.

Qualification
for, and mode
of registry.

Examination
before regis-
tration, when
necessary.

Registration
of persons
from other
Provinces of
the
Dominion.

by this Act, or an institution duly recognized by the Legislature of such other Province as the sole examining body for the purpose of granting certificates of qualification, and wherein the curriculum is equal to that established in Ontario, the holder of any such certificate shall be entitled to registration by the Council upon the production of his certificate if the same privilege is accorded by such examining board or institution to those holding certificates in Ontario. R.S.O. 1914, c. 161, s. 24.

Board of
examiners.

24.—(1) At the annual meeting of the Council in each year, there shall be elected a board of examiners, whose duty it shall be to examine, at least once in each year, all candidates for registration in accordance with the by-laws, rules and regulations of the Council.

Examiners,
how
appointed.

(2) The Board of examiners shall be composed as follows:—One member from each of the teaching bodies now existing, referred to in section 3 of this Act, and one from every other school of medicine which may be hereafter organized in connection with any university or college which is empowered by law to grant diplomas in medicine or surgery; and not less than six members to be chosen from among those members of the College of Physicians and Surgeons of Ontario, who are not connected with any of the above teaching bodies. R.S.O. 1914, c. 161, s. 25.

Where ex-
aminations
to be
held.

25. The examinations shall be held at Toronto, Kingston and London at such times and in such manner as the Council by by-law directs. R.S.O. 1914, c. 161, s. 26.

Examinations
of homœo-
paths.

26. A candidate who, at the time of his examination, signifies his wish to be registered as a homœopathic practitioner, shall not be required to pass an examination in either materia medica, or therapeutics, or in the theory or practice of physic, or in surgery or midwifery, except the operative practical parts thereof, before any examiners other than those approved of by the representatives in the Council of the homœopathic system. R.S.O. 1914, c. 161, s. 27.

Power of
Council to
make rules,
etc.

27.—(1) The Council shall from time to time as occasion may require, make such orders, regulations or by-laws as may be necessary

(a) respecting the registers to be kept under this Act, and the fees to be paid for registration; and

(b) for the guidance of the board of examiners.

As to ex-
aminations.

(2) The Council may prescribe the subjects and modes of the examinations, the time and place of holding the same, and generally may make all such rules and regulations in respect of such examinations not contrary to the provisions of this Act, as they deem expedient and necessary. R.S.O. 1914, c. 161, s. 28.

28. Every person registered under this Act who obtains any higher degree or any qualification other than the qualification in respect of which he has been registered, shall, on the payment of such fees as the Council may prescribe, be entitled to have such higher degree or additional qualification inserted in the register in substitution for, or in addition to, the qualification previously registered. R.S.O. 1914, c. 161, s. 29.

29.—(1) No qualification shall be entered on the register either on the first registration or by way of addition to a registered name unless the registrar is satisfied by proper evidence that the person claiming is entitled to it; and any appeal from the decision of the registrar may be decided by the Council; and any entry proved to the satisfaction of the Council to have been incorrectly made, may be erased from the register by an order in writing of the Council.

(2) In the event of the registrar being dissatisfied with the evidence adduced by the person claiming to be registered, he shall have the power, subject to an appeal to the Council, of refusing registration until the person claiming to be registered has furnished such evidence duly attested by oath, before the judge of a county or district court. R.S.O. 1914, c. 161, s. 30.

30.—(1) Where any registered medical practitioner has either before or after he is registered been convicted either in His Majesty's Dominions or elsewhere of an offence, which, if committed in Canada, would be an indictable offence, or been guilty of any infamous or disgraceful conduct in a professional respect, such practitioner shall be liable to have his name erased from the register.

(2) The Council or the executive committee may, and upon the application of any four registered medical practitioners shall, cause enquiry to be made into the case of a person alleged to be liable to have his name erased under this section, and on proof of such conviction or of such infamous or disgraceful conduct, the Council shall cause the name of such person to be erased from the register; but the name of a person shall not be erased under this section on account of his adopting, or refraining from adopting, the practice of any particular theory of medicine or surgery, nor on account of a conviction for a political offence out of His Majesty's Dominions, nor on account of a conviction for an offence which though within the provisions of this section ought not, either from the trivial nature of the offence, or from the circumstances under which it was committed, to disqualify a person from practising medicine or surgery.

(3) The Council may order to be paid out of any funds at their disposal such costs as to them may seem just to any person against whom any complaint has been made which

Additional
qualification
or degree.

Registrar
to be satis-
fied as to
qualification.

Appeal to the
Council.

Evidence on
oath.

Erasing
names from
register.

Action by
Council.

Saving.

Order for
payment of
costs to re-
spondent.

when finally determined, is found to have been frivolous and vexatious.

Removal
from regis-
ter after
conviction
by Court.

(4) Upon receipt of proof of the finding or decision of any court of record in Ontario, civil or criminal, that a criminal offence has been committed in connection with the practice of his profession by any registered medical practitioner, the registrar shall immediately erase from the register the name of such practitioner. R.S.O. 1914, c. 161, s. 31.

Restoring
names to
register
after erasure.

31.—(1) Where the Council directs the erasure from the register of the name of any person, or of any other entry, the name of that person or that entry shall not be again entered on the register, except by the direction of the Council, or by the order of a divisional court.

Restoration
by Council.

(2) If the Council think fit in any case, they may direct the registrar to restore to the register any name or entry erased therefrom either without fee or on payment of such fee, not exceeding the registration fee, as the Council may, from time to time, fix; and the registrar shall restore the same accordingly. R.S.O. 1914, c. 161, s. 32.

Suspension
of registra-
tion.

32.—(1) In the cases mentioned in subsection 1 of section 30, the Council, instead of directing the erasure from the register of the name of any person, may direct that the registration of such person be suspended for such period as the Council may deem proper, and during the period of such suspension it shall be unlawful for the person suspended to engage in the practice of medicine in Ontario, and he shall during the said period be deemed to be unregistered.

Practising
while
suspended.

(2) If such person engages in the practice of medicine during the period of such suspension, he shall incur the penalty provided by section 47 of this Act.

Application
of other
provisions
to sus-
pension.

(3) Sections 33 to 37 shall apply to the suspending of any person under the provisions of this section in the same manner as to the erasing from the register of the name of any person. 1919, c. 25, s. 21.

Committee
for erasing
and restor-
ing names.

33.—(1) The Council shall for the purpose of exercising in any case the powers of erasing from and of restoring to the register the name of any person or any entry, ascertain the facts of such case by a committee of their own body not exceeding five in number, of whom the quorum shall be not less than three, and a written report of the committee may be acted upon for the purpose of the exercise of such powers by the Council.

Duty of
Council as to
committee.

(2) The Council shall from time to time appoint, and shall always maintain a committee for the purposes of this section, and subject to the provisions of this section, may from time to time determine the constitution, and the number and tenure of office of the members of the committee.

(3) The committee shall meet, from time to time, for the despatch of business, and subject to the provisions of this section, and of any regulations from time to time made by the Council, may regulate the summoning, notice, place, management and adjournment of such meetings, the appointment of a chairman, the mode of deciding questions, and generally the transaction and management of business including the quorum, and if there is a quorum the committee may act notwithstanding any vacancy in their body, and in case of a vacancy the committee may appoint a member of the Council to fill the vacancy until the next meeting of the Council. Procedure.

(4) The committee may, for the purpose of the execution of their duties under this Act, employ, at the expense of the Council, such legal or other assessor or assistant as the committee may think necessary or proper; and the person whose conduct is the subject of enquiry shall also have the right to be represented by counsel; but all meetings of any such committee when held for taking evidence or otherwise ascertaining the facts shall be held within the county where the member complained of resides or the alleged offence was committed. Legal assistance, etc.
Right to counsel.
Place of meeting.

(5) At least two weeks before the first meeting of the committee to be held for taking the evidence or otherwise ascertaining the facts, a notice shall be served upon the person whose conduct is the subject of inquiry, and such notice shall embody a copy of the charges made against him or a statement of the subject matter of the inquiry, and shall also specify the time and place of such meeting. Notice of charge and hearing.

(6) The testimony of witnesses shall be taken under oath, to be administered by the chairman or acting chairman of the committee, and there shall be full right to cross-examine all witnesses called and to call evidence in defence and reply. Evidence.

(7) In the event of the non-attendance of the person whose conduct is the subject of such inquiry, the committee may, upon proof of personal service of the notice aforesaid in accordance with the provisions of this section, which proof of service may be by statutory declaration, proceed with the subject matter of the inquiry in his absence and may make their report of the facts without further notice to such person. Proceeding in absence of accused.

(8) The notice required by subsection 5 shall be deemed to have been duly served in accordance with the provisions thereof if sent by registered mail, prepaid, to the address of the person required to be served, as last entered upon the register. R.S.O. 1914, c. 161, s. 33. Service of notice.

34. No action shall be brought against the Council or the committee for anything done *bona fide* under this Act, notwithstanding any want of form in the proceedings, but any person whose name has been ordered to be erased from Appeal from committee.

the register may appeal from the decision of the Council to a divisional court, at any time within six months from the date of the order for such erasure, and the court may, upon the hearing of the appeal, make such order as to the restoration of the name so erased or confirming such erasure, or for further inquiry by the committee or Council into the facts of the case, and as to costs as the court shall deem just. R.S.O. 1914, c. 161, s. 34.

Procedure.

35. The appeal may be by motion, notice of which shall be served upon the registrar, and shall be founded upon a copy of the proceedings before the committee, the evidence taken, the committee's report and the order of the Council in the matter, certified by the registrar, and the registrar shall, upon the request of any person desiring to appeal, and upon payment of the sum of five cents per folio furnish to any such person a certified copy of all proceedings, reports, orders and papers, upon which the committee have acted in making the order complained of. R.S.O. 1914, c. 161, s. 35.

Evidence before committee for erasing and restoring names.

36. Upon any inquiry under section 30 of this Act either party may, without leave or order, obtain from the Supreme Court a subpoena commanding the attendance and examination of any witness and also the production of any documents the production of which could be compelled at the trial of an action, to and before the committee and at the time and place mentioned in the subpoena; and disobedience to the subpoena shall be deemed a contempt of Court, but the person whose attendance is required shall be entitled to the like conduct money and payment of expenses and for loss of time as upon attendance at a trial. R.S.O. 1914, c. 161, s. 36.

Costs of proceedings.

37. In case of the erasure of a name under the preceding provisions of this Act, the Council may direct the costs of and incidental to such erasure to be paid by the party whose name has been directed to be erased, which costs shall first be taxed by one of the taxing officers of the Supreme Court upon whose certificate execution may issue for the collection of such costs by the College, out of the Supreme Court as upon a judgment in an action in such Court. R.S.O. 1914, c. 161, s. 37.

Rights of Registered Practitioners.

Rights of registered persons.

38. Every person registered under the provisions of this Act shall be entitled according to his qualification or qualifications to practice medicine, surgery or midwifery, or any of them, as the case may be, in Ontario, and to demand and recover in any court reasonable charges for professional aid, advice and visits and the cost of any medicine or other medical or surgical appliances rendered or supplied by him to his patients. R.S.O. 1914, c. 161, s. 38.

39. No duly registered member of the College of Physicians and Surgeons of Ontario shall be liable to any action for negligence or malpractice, by reason of professional services requested or rendered, unless such action is commenced within one year from the date when in the matter complained of such professional services terminated. R.S.O. 1914, c. 161, s. 39.

Publication of Register.

40.—(1) The registrar shall from time to time under the direction of the Council cause to be printed and published a correct register of the names in alphabetical order according to the surnames, with the respective residences in the form set forth in Schedule C, or to the like effect, with the medical titles, diplomas and qualifications and the dates thereof, of all persons appearing on the register as existing on the day of publication; and such register shall be called "The Ontario Medical Register."

(2) A copy of such register for the time being purporting to be printed and published as aforesaid, shall be *prima facie* evidence in all courts, and before all justices of the peace, and others, that the persons therein specified are registered according to the provisions of this Act, and, subject to the provisions of subsection 3 of this section, the absence of the name of any person from such copy shall be *prima facie* evidence that such person is not registered according to the provisions of this Act.

(3) In the case of any person whose name does not appear in such copy, a certified copy under the hand of the registrar, of the entry of the name of such person on the register, shall be evidence that such person is registered under the provisions of this Act. R.S.O. 1914, c. 161, s. 40.

Annual Fees and Certificates.

41.—(1) Every member of the College shall pay to the registrar or to any person deputed by the registrar to receive it, such annual fee, not being less than \$1 nor more than \$2, as may from time to time be determined by by-laws of the Council passed as in this section is provided, to be applied towards the general expenses of the College, which fee shall be due on and from the 1st day of January in the year in which the same is imposed; and such fee shall be deemed to be a debt due by each member to the College, and shall be recoverable with costs of suit in the name of the College of Physicians and Surgeons of Ontario, in the division court of the division in which the member resides.

(2) The Council may by by-law prescribe means of collecting and enforcing the payment of the said annual fee. R.S.O. 1914, c. 161, s. 41.

Medical practitioners to take out annual certificates.

42.—(1) Every registered medical practitioner shall obtain from the registrar annually, before the last day of December in each year, a certificate under the seal of the College, that he is a duly registered medical practitioner.

Issue of certificate.

(2) Upon payment of all fees and dues payable by such medical practitioner to the College the registrar shall write his name on the margin of the certificate and the date thereof and the certificate shall be deemed to be issued only from such date.

Certificate not to issue until fees paid.

(3) No certificate shall be issued to any practitioner who is indebted to the College for any sums payable to the College, nor until the annual fee for such certificate prescribed by the by-laws of the College under this Act is paid.

Penalty for not taking out annual certificate.

(4) If a practitioner omits to take out such annual certificate he shall not be entitled thereto until he pays to the College the certificate fee as aforesaid, together with any other fees or dues which he owes to the College.

Erase of name where default made for 12 months.

(5) After twelve months' default in taking out such certificate, and if two months' notice of such default be given by registered letter addressed to the registered address of such defaulter, the registrar shall, if payment has not been made by the defaulter, erase his name from the register, and the provisions of this Act as to unregistered medical practitioners shall forthwith apply to such medical practitioner.

Re-registration upon payment of arrears.

(6) Such medical practitioner may, unless otherwise disqualified under this Act, at any time after his name is so erased by the registrar, obtain re-registration by applying to the registrar and paying all arrears of fees and dues owing to the College, under this Act, and taking out his certificate as herein provided, and he shall be thereupon re-instated to the full privileges enjoyed by other registered medical practitioners under this Act.

Proviso.

(7) Any fees properly charged by such medical practitioner during the time in which he was in default in payment of any fees or dues to the College shall be legally recoverable upon production of the certificate of registration at the time of suit. R.S.O. 1914, c. 161, s. 42.

Power of Council in respect of the provisions of ss. 41, 42.

43.—(1) The provisions of sections 41 and 42 shall only continue in force so long as a by-law of the Council, adopting the same remains in force; and the Council may repeal such by-law and may by by-law from time to time re-enact the said provisions in whole or in part, or with such modifications as the Council deems proper, subject always to the limit prescribed by section 41.

Who may vote on by-laws under this section.

(2) No member of the Council shall be entitled to vote on any by-law under this section except the elected members of the Council, nine of whom at least must be present at the passing of the by-law. R.S.O. 1914, c. 161, s. 43.

OFFENCES AND PENALTIES.

44. Any person entitled to be registered under this Act but who neglects or omits to be so registered, shall not be entitled to any of the rights or privileges conferred by registration, so long as such neglect or omission continues, and he shall be liable to all the penalties imposed by this Act, or by any other Act in force against unqualified or unregistered practitioners. R.S.O. 1914, c. 161, s. 44.

45. If the registrar makes or causes to be made any wilful falsification in any matter relating to the register, he shall incur a penalty of \$50, and shall be disqualified from again holding the office of registrar. R.S.O. 1914, c. 161, s. 45.

46.—(1) If any person procures or causes to be procured his registration under this Act, by means of any false or fraudulent representation or declaration, either verbal or in writing the registrar, upon the receipt of sufficient evidence of the falsity or fraudulent character of the said representation or declaration, shall represent the matter to the Council, and upon the written order of the president, attested by the seal of the College, shall erase the name of such person from the register, and make known the fact and cause of the erasure by notice to be published in the *Ontario Gazette*.

(2) After such notice has appeared the person whose name has been erased as aforesaid shall cease to be a member of the College and shall cease to enjoy any of the privileges conferred by registration under this Act, and shall not be entitled to enjoy the same at any future time, without the express sanction of the Council.

(3) If any person wilfully procures or attempts to procure himself to be registered under this Act, by making any false or fraudulent representation or declaration, either verbally or in writing, he shall on conviction thereof before any justice of the peace incur a penalty not exceeding \$100; and every person knowingly aiding and assisting him therein shall for such offence on conviction thereof incur a penalty of not less than \$20 nor more than \$50. R.S.O. 1914, c. 161, s. 46.

47. No person not registered shall practise medicine, surgery or midwifery for hire, gain or hope of reward; and if any person not registered pursuant to this Act, for hire, gain or hope of reward practises or professes to practise medicine, surgery or midwifery, or advertises to give advice in medicine, surgery or midwifery, he shall incur a penalty of not less than \$25 nor more \$100. R.S.O. 1914, c. 161, s. 47.

48. Any person who wilfully or falsely pretends to be a physician, doctor of medicine, surgeon or general practitioner, or assumes any title, addition or description other than he

actually possesses and is legally entitled to, shall incur a penalty of not less than \$10 nor more than \$50. R.S.O. 1914, c. 161, s. 48.

Use of certain titles restricted.

49.—(1) Any person not registered pursuant to this Act who takes or uses any name, title, addition or description implying or calculated to lead people to infer that he is registered under this Act, or that he is recognized by law as a physician, surgeon, accoucheur or a licentiate in medicine, surgery or midwifery, or who assumes, uses or employs the title "Doctor," "Surgeon" or "Physician" or any affix or prefix indicative of such titles as an occupational designation relating to the treatment of human ailments, or advertises or holds himself out as such, shall incur a penalty of not less than \$25 nor more than \$100.

Exceptions as to dentistry and pharmacy.
Rev. Stat. c. 198, 199.

(2) Subsection 1 shall not apply to any licentiate of dental surgery or any other person admitted to practise dentistry or dental surgery under the provisions of *The Dentistry Act* nor to any person registered as a pharmaceutical chemist under *The Pharmacy Act*. 1925, c. 48, s. 2.

Not entitled to recover charges unless registered.

50. No person shall be entitled to recover any charge in any court for any medical or surgical advice, or for attendance, or for the performance of any operation, or for any medicine which he may have prescribed or supplied, unless he produces to the court a certificate that he is registered under this Act; but this section shall not extend to the sale of any drug or medicine by any duly authorized chemist or druggist. R.S.O. 1914, c. 161, s. 50.

Public appointments only conferred on registered persons.

51. No person shall be appointed as medical officer, physician or surgeon in any branch of the public service of Ontario, or in any hospital or other charitable institution not supported wholly by voluntary contributions, unless he is registered under the provisions of this Act. R.S.O. 1914, c. 161, s. 51.

Certificates by unregistered persons invalid.

52. No certificate required by any Act now in force, or that may hereafter be passed, from any physician or surgeon or medical practitioner, shall be valid unless the person signing the same is registered under this Act. R.S.O. 1914, c. 161, s. 52.

Application of Rev. Stat. c. 121.

53. The penalties provided by this Act shall be recoverable under *The Summary Convictions Act*, and that Act shall apply to prosecutions for offences against this Act. R.S.O. 1914, c. 161, s. 53.

Onus probandi.

54. In any trial under this Act the burden of proof as to registration shall be upon the person charged. R.S.O. 1914, c. 161, s. 54.

55. In all cases where proof of registration under this Act is required to be made, the production of a printed or other copy of the register, certified under the hand of the registrar shall be sufficient evidence of all persons who are registered practitioners, in lieu of the production of the original register; and any certificate upon such printed or other copy of the register, purporting to be signed by any person in his capacity of registrar under this Act shall be *prima facie* evidence that such person is the registrar, without any proof of his signature or of his being in fact the registrar. R.S.O. 1914, c. 161, s. 55.

Evidence of
registry and
signature of
registrar.

56. Every prosecution under this Act shall be commenced within one year from the date of the alleged offence. R.S.O. 1914, c. 161, s. 56.

Limitation
of prosecu-
tions.

57. The Council by an order signed by the president having the seal of the College appended thereto, may stay proceedings in any prosecution under this Act where it is deemed expedient. R.S.O. 1914, c. 161, s. 57.

Stay of pro-
ceedings.

58.—(1) All penalties recovered under this Act shall be paid to the convicting justice and by him paid to the registrar of the College, and shall form part of the funds thereof.

To whom
penalties
paid.

(2) Any person may be prosecutor or complainant under this Act, and the Council may allot such portion of the penalties recovered as may be expedient towards the payment of such prosecutor. R.S.O. 1914, c. 161, s. 58.

Prosecutor.

APPLICATION OF FUNDS.

59. All moneys forming part of the Council funds shall be paid to the treasurer, and may be applied to carry this Act into execution. R.S.O. 1914, c. 161, s. 59.

Council
funds.

APPLICATION OF CANADA MEDICAL ACT.

60. Subject to the provisos and conditions therein contained, *The Canada Medical Act*, Revised Statutes of Canada 1906, chapter 137 and amendments thereto are accepted and shall apply to the Province of Ontario, and registration by the Medical Council of Canada shall be accepted as equivalent to registration for the like purposes under this Act. R.S.O. 1914, c. 161, s. 60.

Application
of R.S.C.
c. 137.

SCHEDULE A.

(Sections 5 and 15.)

TERRITORIAL DIVISIONS.

1. Counties of Essex, Kent and Lambton.
2. Counties of Elgin, Norfolk and Oxford.
3. County of Middlesex.
4. Counties of Huron and Perth.
5. Counties of Waterloo and Wellington.
6. Counties of Bruce, Grey, Dufferin and Simcoe.
7. Counties of Wentworth, Halton and Peel.
8. Counties of Lincoln, Welland, Haldimand and Brant.
9. Districts of Parry Sound, Nipissing, Sudbury, Temiskaming, Algoma and Manitoulin.
10. Districts of Thunder Bay, Kenora and Rainy River.
11. That part of the City of Toronto lying east of Yonge Street.
12. That part of the City of Toronto lying west of Yonge Street.
13. Counties of Ontario, Victoria and York, exclusive of Toronto, and the District of Muskoka.
14. Counties of Northumberland, Peterborough, Durham and Haliburton.
15. Counties of Prince Edward and Hastings and the Electoral District of Lennox.
16. Counties of Frontenac, and Renfrew and the Electoral District of Addington.
17. Counties of Leeds, Grenville, Dundas and Stormont.
18. Counties of Carleton, Russell, Prescott, Glengarry and Lanark.

R.S.O. 1914, c. 161, sched. A.

SCHEDULE B.

(Sections 23 and 24.)

QUALIFICATIONS FOR REGISTRY.

1. License to practise Physic, Surgery and Midwifery, or either, within Upper Canada, granted under the Acts of Upper Canada, 59 Geo. III., c. 13, and 8 Geo. IV., c. 3, respectively.

2. License or diploma granted under 2 Vict., c. 38, or under the Consolidated Statutes for Upper Canada, chapter 40, or any Act amending the same.

3. License or authorization to practise Physic, Surgery and Midwifery, or either, within Lower Canada, whether granted under the Ordinance 28 Geo. III., c. 8, or under the Act 10 and 11 Vict., c. 26, and the Acts amending the same, or under chapter 71 of the Consolidated Statutes for Lower Canada, or any Act amending the same.

4. Certificate of Qualification to practise Medicine, Surgery and Midwifery, or either, granted by any of the Colleges or bodies named or referred to in section 6 of this Act.

5. Medical or surgical degree or diploma of any University or College in His Majesty's Dominions, or of such other Universities or Colleges as the Council may determine.

6. Certificate of registration under the Imperial Act, 21 and 22 Vict., c. 90, known as "The Medical Act," or any Act amending the same.

7. Commission or warrant as Physician or Surgeon, in His Majesty's military service.

8. Certificates of qualification to practise under any of the Acts relating to Homœopathy or the Eclectic system of Medicine.

R.S.O. 1914, c. 161, sched. B.

SCHEDULE C.

(Section 42.)

FORM OF REGISTER.

Name.	Residence.	Qualifications and additions.
A. B.	Toronto, County of York....	M.A., M.D., Toronto University.
C. D.	Kingston, County of Frontenac	M.A., M.D., Queen's University.
E. F.	Etobicoke, County of York..	Licentiate, Medical Board.
G. H.	Toronto	do Toronto School of Medicine.

R.S.O. 1914, c. 161, sched. C.

CHAPTER 197.

The Anatomy Act.

Interpretation **1.** In this Act,

“Medical
School.”

“Medical School” shall mean and include the Faculties of Medicine of the University of Toronto, of Queen’s University and of the Western University, the Hamilton School of Anatomy and any other institution which the Lieutenant-Governor in Council may declare to be a medical school. R.S.O. 1914, c. 162, s. 2.

Appointment
of inspectors
of anatomy.

2. The Lieutenant-Governor in Council may appoint a General Inspector of Anatomy for Ontario and local inspectors for such places as may be deemed advisable, and may make regulations defining the duties of the General Inspector and imposing duties on the local inspectors in addition to the duties imposed by this Act and otherwise for carrying out the provisions of this Act, and may fix the fees to be received by the General Inspector and local inspectors for services performed under this Act and under such regulations. R.S.O. 1914, c. 162, s. 3.

Disposal of
certain
bodies for
study of
anatomy.

3.—(1) The body of any dead person found publicly exposed or sent to a public morgue, upon which a coroner after having viewed it shall deem an inquest unnecessary or of any person who immediately before death was supported in and by any public institution, shall be immediately placed under the control of the local inspector of anatomy.

Where not
claimed.

(2) Unless such body within twenty-four hours after being so found or sent to a public morgue, or after death where the death takes place in a public institution, is claimed by

(a) a relative or a *bona fide* friend, or

(b) a person who produces an order made under subsection 3 and pays \$5 to defray the funeral expenses, or

(c) in the case of the body of a person who was supported in a county house of refuge by a county councillor,

the same shall be delivered by the local inspector to some person qualified as hereinafter provided.

(3) An order (Form 1), may be obtained from the police magistrate, or where there is no police magistrate, from a justice of the peace having jurisdiction in the locality. Order by magistrate.

(4) This section shall not apply to the body of a lunatic who has died in a Provincial hospital for the insane. R.S.O. 1914, c. 162, s. 4. Not to apply to body of lunatic.

4.—(1) It shall be the duty of the relative or friend to whom a dead body is delivered, under the provisions of section 3, to cause it to be decently interred, or he may, upon payment to them of \$5, require the authorities under whose care the dead body was to inter it. Duty of interment.

(2) A dead body delivered to a county councillor shall be decently interred at the expense of the county. R.S.O. 1914, c. 162, s. 5. Idem.

5. The persons qualified to receive such unclaimed bodies shall be the teachers of anatomy or surgery in a medical school; and if there is any medical school in the locality where there is a body to be delivered to persons so qualified, such school shall have the first claim to the body. R.S.O. 1914, c. 162, s. 6. To whom unclaimed bodies shall be delivered.

6.—(1) Any medical school obtaining a body shall keep and preserve the same for not less than fourteen days, and in the event of a relative or *bona fide* friend claiming it within that time the medical school shall deliver the body to such relative or friend upon receipt of the reasonable costs and charges for preserving and keeping the same, not to exceed \$10. Body delivered to medical school may be claimed by friends.

(2) Every such medical school shall keep such records as may be prescribed by the regulations, and the same shall at all times be open to inspection by the General Inspector and by a local inspector. R.S.O. 1914, c. 162, s. 7. Records.

7. Every local inspector of anatomy shall

- (a) keep a register showing the name, age, sex, birth-place and religious denomination of every person whose unclaimed body has been received by him, and the name of the medical school to which such body was delivered, with the date of delivery; Duties of local inspector. Register of subjects.
- (b) keep a register of the medical schools qualified to receive and desirous of receiving bodies for the instruction of students; Register of schools.
- (c) subject to the provisions of section 5 distribute all bodies, in rotation, to such schools in proportion to the number of persons actually engaged in the study of human anatomy in each school, as shown by their official registers, which he shall be allowed to inspect; Distribution of subjects

Inspection
of rooms.

(d) inspect the authorized practical anatomy rooms in his locality at least once in every six weeks, and direct the removal and decent interment of any remains that he deems it advisable to have interred;

Keeping
registers open.

(e) keep his registers open for the inspection of any registered medical practitioner who may desire to inspect them;

Entries in
morgue
register.

(f) enter in the morgue register, for the purpose of identification, a description of every body received by him, and of the clothing and effects found thereon, and the name of the medical school to which such body was delivered;

Report to
General
Inspector.

(g) furnish to the General Inspector the name of the deceased and of the school to which the body was sent. R.S.O. 1914, c. 162, s. 8.

Notification
of appoint-
ment.

8. Every local inspector shall, without delay, give notice of his appointment to all persons mentioned in sections 9 to 12. R.S.O. 1914, c. 162, s. 9.

Coroner to
give notice to
inspector of
bodies found
exposed.

9. Every coroner, whether he does or does not hold an inquest on a body found publicly exposed, to which his attention has been called, and which is not claimed in accordance with section 3, shall give notice to the local inspector, if there is one, and if there is none, he shall cause the body to be interred at the expense of the municipality in which it was found. R.S.O. 1914, c. 162, s. 10.

Notice to be
given to
inspector by
person in
charge of
morgue.

10. Where the body is placed in a public morgue the person in charge of the morgue shall forthwith give notice thereof to the local inspector. R.S.O. 1914, c. 162, s. 11.

Notice to be
given to in-
spector by
head of
municipality.

11. The head of any municipality in which a dead body to which this Act applies is found and of which he has notice shall cause notice thereof to be given within twenty-four hours to the local inspector. R.S.O. 1914, c. 162, s. 12.

Notice to be
given to in-
spector by
superinten-
dents of
public
institutions.

12.—(1) The superintendent of every public institution to which this Act applies shall, upon the death of an inmate of the institution, give notice thereof within twenty-four hours to the local inspector.

Register to
be kept by
superinten-
dent.

(2) Every such superintendent shall keep a register showing the name, age, sex, birthplace and religious denomination of each person whose body is disposed of under the provisions of this Act, and the school to which such body is delivered, and shall file all documents furnished by persons claiming bodies, and such register and documents shall be open for inspection.

Body only
to be
delivered
to school on
order.

(3) No superintendent shall deliver a body to a medical school except on the written order of the local inspector. R.S.O. 1914, c. 162, s. 13.

13. A medical school desiring to avail itself of the benefits of this Act shall give a bond to the General Inspector in the sum of \$80, with two sufficient sureties to his satisfaction in the sum of \$40 each, for the decent interment of the bodies after they have served the purposes required; and thereupon the General Inspector shall deliver to such school a written authority to open a practical anatomy room entitled to the benefits of this Act. R.S.O. 1914, c. 162, s. 14.

Medical schools availing themselves of this Act to give security.

14. Every person who neglects to discharge the duties imposed upon him by this Act or any regulation made thereunder, or who contravenes any provision thereof, shall incur a penalty of not more than \$20 for every such offence. R.S.O. 1914, c. 162, s. 15.

Penalty for neglect of duty.

15. No person shall send or take a dead body out of Ontario for surgical or practical anatomical purposes, and every person contravening the provisions of this section shall for each offence incur a penalty of \$100. R.S.O. 1914, c. 162, s. 16.

Removal of bodies from Province for purposes of anatomy prohibited.

16. The penalties imposed by or under the authority of this Act shall be recoverable under *The Summary Convictions Act*. R.S.O. 1914, c. 162, s. 17.

Recovery of penalties. Rev. Stat. c. 121.

17. Subject to the provisions of this Act, any unclaimed dead body found within the limits of a city, town, village or township shall be interred at the expense of the corporation thereof, but such corporation may recover such expense from the estate of the deceased or from any person whose duty it was to inter such dead body. R.S.O. 1914, c. 162, s. 18.

Burial of unclaimed bodies.

FORM 1.

(Section 3.)

THE ANATOMY ACT.

To all whom it may concern:

Whereas A. B. of *(here state the name, residence and occupation of the person by whom or on whose behalf the order is applied for)* has satisfied me that he is a relative *(or bona fide friend)* of C. D. deceased, and is entitled to have his body delivered to him for the purpose of interment.

I hereby authorize and order every person and authority having the present custody or control of the body forthwith upon presentation of this order to deliver it to the said A. B. for interment.

Witness my hand and seal as Police Magistrate *(or Justice of the Peace)* of and for *(as the case may be)*
this day of , 19 .

R.S.O. 1914, c. 162, Form 1.

CHAPTER 198.

The Dentistry Act.

ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO.

Royal College of Dental Surgeons of Ontario.

1. The Royal College of Dental Surgeons of Ontario, hereinafter called "the College," is continued, and every person who holds a valid and unforfeited certificate of license to practise dentistry granted to him by such College shall be a member of the corporation. 1926, c. 46, s. 2.

Power as to real estate.

2.—(1) The College may purchase, take and possess for the purposes of the College, but for no other purpose, and, after acquiring the same, may sell, mortgage, lease or dispose of any real estate.

Consent to alienation, etc., required.

(2) Such real estate shall not be sold, mortgaged, leased or disposed of, except with the consent of the Board of Directors, given at a meeting duly called for that purpose and with the consent of the Minister of Education.

Notice of meeting.

(3) Notice of such meeting shall be given to every member of the Board by letter mailed to his last registered address, seven days before the day appointed for such meeting, stating the object thereof. 1926, c. 46, s. 3.

BOARD OF DIRECTORS.

Board of Directors.

3.—(1) There shall continue to be a Board of Directors of the College, hereinafter called the "the Board."

Number of members.

(2) The Board shall consist of nine elected members each of whom shall be a member of the College and shall hold office for two years and the Minister of Education for the Province of Ontario who shall be *ex officio* a member of the Board.

Quorum.

(3) The presence of at least five of the elected members of the Board shall be necessary to constitute a quorum.

One member for each electoral district.

(4) One member shall be elected for each electoral district mentioned in Schedule "A" by the members of the College resident in such district, and every person so elected shall be a resident of the electoral district for which he is elected and no person shall be eligible for election as a representative

of an electoral district who is a member of any dental faculty and in receipt of salary or other remuneration for his services thereon.

(5) One member shall be elected by and from the Faculty of Dentistry of the University of Toronto. Member from Faculty of Dentistry.

(6) A member of the Board may at any time resign his office by giving notice of his resignation in writing to the secretary and in case of a vacancy occurring through resignation or otherwise: Resignation.

(a) where the vacancy occurs in the representation of an electoral district more than two months prior to the holding of a general election, an election shall be held for the electoral district to fill the vacancy, and where the vacancy occurs not more than two months prior to the date of the general election, no person shall be elected or appointed to fill the vacancy; Filling vacancies.

(b) where the vacancy is in the representation of the Faculty of Dentistry, the remaining members of the Faculty shall elect a duly qualified person to fill the vacancy. 1926, c. 46, s. 4.

4. The Province of Ontario shall, for the purposes of this Act, be divided into the eight electoral districts described in Schedule "A." 1926, c. 46, s. 5. Electoral districts.

5.—(1) An election of the Board shall be held on the second Wednesday of December in every second year, reckoning from the year 1926. Election of Board.

(2) No person shall be qualified to vote at such election if he is in arrear in respect of any fees payable by him. Qualification of voters.

(3) The votes at such election shall be given by closed voting papers, Form 1. How votes to be given.

(4) The manner of holding such election with respect to notification of the electors of the time and place of holding the election, the nomination of candidates, the presiding officer thereat, the taking and counting of the votes, the giving of a casting vote in case of an equality of votes, and other necessary details shall be determined by by-law of the Board, and in default of such by-law, may be prescribed by the Lieutenant-Governor in Council. 1926, c. 46, s. 6. Manner of election.

6.—(1) Every newly elected Board shall hold its first meeting in the City of Toronto on the first Monday in May, or at such other time as may be fixed by the retiring Board, and the members of the Board shall hold office until the first meeting of their successors. First meeting of Board.

Subsequent
meetings.

(2) Other meetings shall be held at such time and place as the Board appoints.

Special
meetings.

(3) Special meetings may be called by the president at any time, and on the request in writing of four members of the Board he shall call a special meeting. 1926, c. 46, s. 7.

OFFICERS OF BOARD.

President
and
officers.

7.—(1) Every Board shall at its first meeting elect a president, a vice-president and a registrar, and shall appoint a treasurer and a secretary, and such other officers as the Board considers necessary.

Remunera-
tion of treas-
urer and
secretary.

(2) The treasurer and the secretary shall receive such remuneration for their services as the Board may fix.

President,
etc., pro
tempore.

(3) The Board shall, if the president and vice-president are absent, elect one of its members to preside at its meeting, who, while so presiding, shall have the same powers and exercise the same functions as the president.

Executive
committee.

(4) The Board shall annually appoint from among its members not more than five persons who shall constitute an executive committee to take cognizance of and action upon all such matters as may be delegated to it, or as may require immediate action or attention between meetings of the Board, but no action taken by the executive committee shall be valid unless agreed to by at least three members of the committee nor after the next ensuing meeting of the Board unless approved by the Board at that meeting, and the executive committee shall not have power to alter, amend or suspend any by-law of the Board. 1926, c. 46, s. 8.

Remunera-
tion of
members of
Board.

8. There shall be paid to the members of the Board such fees for attendances and such reasonable travelling expenses as may be fixed by by-law of the Board. 1926, c. 46, s. 9.

Funds pay-
able to the
treasurer.

9.—(1) All moneys under the control of the Board shall be paid to the treasurer, and shall be applied for the purpose of the College.

Grants
for certain
purposes.

(2) The Board may out of any funds in its hands from time to time make grants,—

- (a) for post graduate courses and kindred educational extension work;
- (b) for scholarship, lectureship and research work; and
- (c) in aid of any fund which has for its purpose investigation in the interest of dental, medical and surgical science; and

- (d) in aid of any association or other body having for its object the protection of members of the college or the adjustment of claims against them for anything done in their professional capacity. 1926, c. 46, s. 10.

BY-LAWS OF BOARD.

10.—(1) The Board shall make such by-laws as it may deem necessary for the proper and better guidance, govern-^{Power to make by-laws.}ment, discipline and regulation of the Board, the College, the members of the College and the profession of dental surgery, and the carrying out of the provisions of this Act, and such by-laws shall be published for two consecutive weeks in the *Ontario Gazette*, and shall not take effect until so published.

(2) Such by-laws or any of them may be annulled by the Lieutenant-Governor in Council. 1926, c. 46, s. 11. ^{Annulment.}

CERTIFICATES OF LICENSE.

11.—(1) The Board may appoint one or more examiners^{Matriculation.} for the matriculation or preliminary examination of all students entering the profession, or may accept in lieu of such matriculation or preliminary examination evidence that a student has passed any other satisfactory examination.

(2) Such examination shall be passed prior to being entered as a student of dentistry. 1926, c. 46, s. 12. ^{Prior to entry as student.}

12.—(1) The Board may prescribe a curriculum of studies to be pursued by students, and fix and determine the^{Curriculum for students, etc.} period for which every student shall be articled and employed under a duly licensed practitioner, the examination necessary to be passed and the fees to be paid to the treasurer before^{Fees.} a certificate of license to practise dental surgery is issued.

(2) The Board may prescribe the conditions upon which^{Admission of other persons.} dentists residing elsewhere than in Ontario, and students and graduates from other dental colleges may be admitted to membership in the College. 1926, c. 46, s. 13.

13. Subject to the approval of the Lieutenant-Governor in Council, the College may make arrangements with any university or college in Ontario for the use of any library,^{Arrangements for education of students.} museum or property belonging to or under the control of such university or college, and may affiliate with any such university or college, and may enter into all arrangements necessary to that end upon such terms as may be agreed upon. 1926, c. 46, s. 14.

Qualification
of certain
practitioners.

14.—(1) All persons, being British subjects by birth or naturalization, who were engaged on the 4th day of March, 1868, in the practice of the profession of dentistry, or who, not having been residents of Ontario, had then had three years' experience in the practice of dentistry, shall be entitled to the certificate of "Licentiate of Dental Surgery," upon furnishing to the Board satisfactory proof of their having been so engaged, or having had such experience, passing the required examination and paying the prescribed fees.

Exemption
of certain
practitioners.

(2) All persons, being British subjects by birth or naturalization, who were continuously engaged for five years and upwards in established office practice, next preceding the 4th day of March, 1868, in the practice of the profession of dentistry in Ontario shall, upon satisfactory proof thereof, and upon payment of the prescribed fees, be entitled to such certificate without passing any examination. 1926, c. 46, s. 15.

Annual
examina-
tions.

15.—(1) The Board, once at least in every year, shall cause to be held at a time fixed by the Board, an examination of the candidates for certificates and such titles as the Board has authority to grant.

How and by
whom
conducted.

(2) At every such examination the candidates shall be examined orally or in writing or otherwise, by examiners to be appointed for that purpose by the Board, in such subjects as the Board shall prescribe.

Fees of
examiners.

(3) The examiners shall receive such remuneration as may be fixed by the Board.

Declaration
by examiners.

(4) Each examiner shall, if required, subscribe and take the following declaration:

Form of de-
claration.

"I solemnly declare that I will perform my duty of Examiner without fear, favour, affection or partiality towards any candidate, and that I will not knowingly allow to any candidate any advantage which is not equally allowed to all."

Accepting
other
examination
as substitute.

(5) The Board may dispense with such examination in the case of any person who proves to the satisfaction of the Board that he has passed in any university or college an examination which the Board deems of equal value. 1926, c. 46, s. 16.

Certificate of
qualification
to practise.

16.—(1) If the Board is satisfied by the examination that the candidate is duly qualified to practise the profession of dental surgery, and that he is a person of integrity and good moral character, it shall, subject to the by-laws, grant him a certificate of license and the title of "Licentiate of Dental Surgery," which certificate and title shall entitle him to all the rights and privileges conferred by this Act.

Designation
of
"Licentiate."

(2) The Board shall hold at least one meeting in each year in the City of Toronto for the purpose of granting such certificates and titles and for the transaction of such other business as may properly come before it. 1926, c. 46, s. 17.

17. Every certificate of license shall be sealed with the corporate seal of the College and signed by the president and secretary of the Board; and the production of such certificate of license shall be *prima facie* evidence in all courts and upon all proceedings of its execution and contents. 1926, c. 46, s. 18.

18. The secretary of the Board shall, on or before the 15th day of January in each year, transmit to the Provincial Secretary a certified list of the names of all persons to whom certificates of license have been granted during the year ending on the next preceding 31st day of December. 1926, c. 46, s. 19.

19. Every person desirous of obtaining a license to practise dentistry in Ontario shall at least one month before the prescribed examination make application in the form prescribed by the Board and pay to the treasurer the prescribed fees, and deliver to the secretary the treasurer's receipt for the same, together with satisfactory evidence of his service under articles and compliance with the rules and regulations prescribed by the Board, and of his integrity and good morals. 1926, c. 46, s. 20.

ANNUAL FEES.

20.—(1) Every member of the College engaged in the practice of dental surgery in Ontario shall, on or before the first day of January in each year, pay to the treasurer, or to a person deputed by him to receive the same, such annual registration fee, not exceeding \$10, as may be prescribed by by-law of the Board, and such fee shall be recoverable by suit in the name of the Royal College of Dental Surgeons of Ontario in the division court of the division in which the member in default resides.

(2) For any services rendered in the practice of dental surgery while he is in default in respect of any annual fee a member shall not be entitled to recover in any court.

(3) Where default is made in payment of the annual fee and such default continues for a period of one month the license of a member so in default shall lapse but such license may be renewed thereafter upon payment of the fee and an additional sum not exceeding \$10. 1926, c. 46, s. 21.

PENALTY FOR PRACTISING WITHOUT LICENSE.

Prohibition
against
practising
without
certificate.

21.—(1) No person who is not a member of the College shall, by himself or by any other person, practise the profession of dental surgery, or perform any dental operation upon or prescribe any dental treatment for any person for hire, gain or hope of reward whether by way of fees, salary, rent, percentage of receipts or in any other form, or shall pretend to hold or take or use any name, title, addition or description implying that he holds a certificate of license to practise dental surgery, or that he is a member of the College, or shall falsely represent or use any title representing that he is a graduate of any dental college or any title or description whatsoever which implies that he practises dentistry or any branch of dentistry or which contains the words “dentist,” “dentistry,” “dental” or any derivative of any such word or any letters, signs or abbreviation having the like significance.

Or using
designation.

Prohibition
as to persons
other than
College es-
tablishing
college, etc.

(2) No person, other than the College, shall carry on in Ontario any school, college, laboratory or other institution for training or imparting instruction in any branch of dentistry but this shall not apply to any faculty of dentistry in a university in Ontario.

Penalties.

(3) Every person who contravenes any of the provisions of this section shall, for the first offence, incur a penalty of \$50, and for every subsequent offence a penalty of \$100, and he shall not be entitled to sue or recover in any court for any services which he performed, or materials which he provided, in the ordinary and customary work of a dental surgeon.

Saving as to
student.

(4) This section shall not prevent any duly articulated student of dental surgery from receiving instruction in clinics and practice under the personal supervision of a member of the College.

Recovery
and applica-
tion.
Rev. Stat.
c. 121.

(5) The penalties shall be recoverable under *The Summary Convictions Act*, and shall be paid over by the convicting justice to the treasurer of the College. 1926, c. 46, s. 22.

Onus of
proof.

22. In any prosecution under section 21 the burden of proof of qualification shall be upon the defendant. 1926, c. 46, s. 23.

SUSPENSION OR CANCELLATION OF CERTIFICATE.

Power of
Board to
suspend or
cancel
certificates.

Saving.

23.—(1) The Board may suspend or cancel the certificate of license of a member of the College who has been heretofore or shall hereafter be convicted in Canada or elsewhere of an indictable offence if his conviction remains unreversed, or who has been or shall be guilty of any infamous, disgraceful or improper conduct in a professional respect; but this power shall not be exercised if the conviction is for a political offence committed out of His Majesty's Dominions, or for an offence

which, though indictable, ought not, either from its nature or from the circumstances under which it was committed, to disqualify the person convicted from practising dentistry.

(2) Where a member has been guilty of infamous, disgraceful or improper conduct in a professional respect the power conferred by subsection 1 may be exercised, notwithstanding that he has been acquitted of a criminal charge in respect of the same matter. Notwithstanding acquittal of criminal charge.

(3) The Board or the executive committee may of its own motion, and upon the application of any four members of the College shall, cause inquiry to be made into any case in which it is alleged that a member of the College has become liable to the suspension or cancellation of his certificate of license for any of the causes mentioned in subsection 1. 1926, c. 46, s. 24. Inquiry by Board.

DISCIPLINE COMMITTEE.

24.—(1) The Board shall appoint and shall always maintain a discipline committee of its own body for the purpose of ascertaining the facts of each case which may become the subject of inquiry. Discipline Committee.

(2) The Committee shall consist of not more than five members, as the Board may prescribe, three of whom shall be a quorum. Number of committee, quorum.

(3) The Board may by by-law provide that the secretary of the Board shall be a member of the committee. Secretary may be appointed a member of committee.

(4) The Board may pass by-laws for determining the tenure of office of the members of the committee and for the regulation and conduct of its proceedings. By-laws as to tenure of office, proceedings.

(5) Subject to the provisions of this section and of the by-laws of the Board the committee may regulate the time and place for the holding, the manner of the convening and giving notice, and the conduct of its meetings. Time, place and notice of meetings.

(6) If a vacancy occurs in the membership of the committee the remaining members may appoint a member of the Board to fill the vacancy, and the member appointed shall hold office until the next meeting of the Board. Appointments to fill vacancies.

(7) Notwithstanding any vacancy in the committee, so long as there are at least three members thereof, it shall be competent for the committee to exercise all or any of its powers. Quorum of committee.

(8) The committee may employ, at the expense of the Board, for the purposes of any inquiry, such legal or other assistance as the committee may deem necessary. Employment of assistance.

(9) The member whose conduct is the subject of inquiry shall have the right to be represented by counsel. Appearance by counsel.

Place of
meeting.

(10) All meetings of the committee for taking evidence or otherwise ascertaining the facts shall be held within the county or district in which the member whose conduct is the subject of inquiry resides unless such member and the Board agree to the meeting being held at the City of Toronto.

Notice of
meeting.

(11) At least ten days' notice of the meeting of the committee for taking the evidence or otherwise ascertaining the facts shall be given to the member whose conduct is the subject of inquiry.

Contents of
notice.

(12) The notice shall contain a statement of the matter which is to form the subject of the inquiry.

Evidence
on oath.

(13) The testimony of the witnesses shall be taken under oath, which the chairman or any member of the committee may administer, and there shall be full right to cross-examine all witnesses called and to adduce evidence in defence and in reply.

Effect of
non-appear-
ance.

(14) If the person whose conduct is the subject of the inquiry though duly notified does not attend, the committee may proceed in his absence, and he shall not be entitled to notice of the future meetings or proceedings of the committee.

Subpœnas.

(15) The committee and any party to the proceedings may obtain on *præcipe* from the Supreme Court a subpœna for the attendance of witnesses and the production of books, documents and things, and disobedience thereof shall be deemed a contempt of court.

Witness fees.

(16) Witnesses shall be entitled to the like allowances as witnesses attending upon the trial of an action in the Supreme Court.

Report.

(17) The committee shall report to the Board the evidence adduced and the Committee's findings thereon.

Acting upon
report.

(18) The Board may act upon the report of the committee and may make such order thereon as the Board may deem just.

Costs of
vexatious
complaint.

(19) Where the complaint is found to be frivolous or vexatious the Board may pay such costs as to it may seem just to a member whose conduct has been the subject of inquiry.

Costs of
enquiry.

(20) Where the Board directs the certificate of license of a member to be suspended or cancelled it may direct that the costs of and incidental to the inquiry be paid by such member, and after taxation of such costs by the Taxing Officer of the Supreme Court at Toronto, execution may issue out of the Supreme Court for the recovery thereof in like manner as upon a judgment in an action in that Court.

(21) The costs to be taxed and allowed against a member, including the costs of appeal, if any, shall as far as practicable be the same or the like costs, as in an action in the Supreme Court and the Taxing Officer may also allow such fees and disbursements for work done or proceedings taken before notice of complaint as he may deem just. 1926, c. 46, s. 25.

Costs to be similar to those in action in Supreme Court.

25. No action shall be brought against the Board or the committee or any member thereof for anything done in good faith under this Act on account of any want of form or irregularity in their proceedings, but a member whose certificate of license has been suspended or cancelled may, at any time within one month from the date of the decision of the Board, appeal from the decision of the Board to a divisional court. 1926, c. 46, s. 26; 1927, c. 28, s. 38.

No action to lie against Board or committee.

Appeal from decision of Board.

26. The practice and procedure upon and in relation to an appeal shall be similar to that provided by *The County Courts Act* except that the proceedings and evidence shall be certified by the registrar to the Appellate Division. 1926, c. 46, s. 27.

Practice and procedure on appeal. Rev. Stat. c. 91.

27. The Board may direct the restoration of the certificate of license of any member whose certificate has been cancelled under the powers conferred by this Act upon such terms and conditions as the Board may deem just. 1926, c. 46, s. 28.

Restoration of certificate.

28. No duly registered member of the Royal College of Dental Surgeons shall be liable to any action for negligence or malpractice, by reason of professional services requested or rendered, unless such action is commenced within six months from the date when in the matter complained of such professional services terminated. 1926, c. 46, s. 29.

Action for malpractice, etc.

29. Nothing in this Act shall affect or interfere with the rights and privileges conferred upon legally qualified medical practitioners by *The Medical Act*. 1926, c. 46, s. 30.

Saving as to qualified medical practitioners. Rev. Stat. c. 196.

SCHEDULE A.

ELECTORAL DISTRICTS.

Electoral District No. 1 shall consist of the following counties: Addington, Carleton, Dundas, Frontenac, Glengarry, Grenville, Lanark, Leeds, Lennox, Prescott, Russell, Renfrew and Stormont.

Electoral District No. 2 shall consist of the following counties: Durham, Haliburton, Hastings, Muskoka, Northumberland, Ontario, Prince Edward, Peterborough, and Victoria.

Electoral District No. 3 shall consist of the following counties and districts: Algoma, Kenora, Manitoulin, Nipissing, Parry Sound, Rainy River, Sudbury, Thunder Bay and Temiskaming.

Electoral District No. 4 shall consist of the City of Toronto.

Electoral District No. 5 shall consist of the following counties: Bruce, Dufferin, Grey, Huron, Perth and Simcoe.

Electoral District No. 6 shall consist of the following counties: Elgin, Essex, Kent, Lambton and Middlesex.

Electoral District No. 7 shall consist of the following counties: Brant, Haldimand, Norfolk, Oxford, Waterloo and Wellington.

Electoral District No. 8 shall consist of the following counties: Halton, Lincoln, Peel, Welland, Wentworth and York (except Toronto).

1926, c. 46, Sched. "A."

FORM I.

(Section 5.)

VOTING PAPER.

Electoral District No. _____ Election 19
I, _____ of the _____ of
_____ in the County or District of _____ member of the
Royal College of Dental Surgeons of Ontario, declare:

1. That the signature affixed hereto is my proper handwriting.
2. That I am a voter in the Electoral District No. _____ and that I vote for _____ of the _____ of _____ in the county or district of _____ a member of the Royal College of Dental Surgeons of Ontario and an elector in said Electoral District to be a member of the Board of Directors of the College for the said district.
3. That I have not in this election signed any other voting paper and that this voting paper was executed on the day of the date thereof.

Witness my hand this _____ day of _____ 19 _____

1926, c. 46, Sched. "A," Form I.

CHAPTER 199.

The Pharmacy Act.

1. The Ontario College of Pharmacy, hereinafter called Ontario College of Pharmacy. "the College," is continued. R.S.O. 1914, c. 164, s. 2.

2. The College may purchase, take and possess for the purposes of the College, but for no other purpose, and after acquiring the same, may sell, mortgage, lease or dispose of any real estate. Powers as to real estate. R.S.O. 1914, c. 164, s. 3.

PHARMACEUTICAL COUNCIL.

3.—(1) There shall be a Council of the College to be called the Pharmaceutical Council, hereinafter called "the Council," Council of whom composed. which shall consist of thirteen members, who shall be elected as hereinafter provided, and shall hold office for two years, from and including the third Monday in November next following such election. R.S.O. 1914, c. 164, s. 4 (1) ; 1924, c. 43, s. 2.

(2) The Council shall, subject to the by-laws thereof, have sole control of the real and personal property of the College, Powers of Council. and authority to grant certificates of competency to conduct the business of a chemist or druggist, and to be registered subject to the provisions of this Act. R.S.O. 1914, c. 164, s. 4 (2).

(3) The members of the Council shall be elected from among those members of the College who are entitled to vote at the election of the members of the Council. Qualification. R.S.O. 1914, c. 164, s. 4 (3) ; 1917, c. 35, s. 1.

4.—(1) The Province of Ontario shall, for the purposes of this Act, be divided into thirteen electoral districts described in Schedule A. Electoral districts.

(2) The Council may re-arrange the geographical boundaries of the electoral districts by by-law, approved of by the Lieutenant-Governor in Council, but such re-arrangement shall not be made more often than once in ten years. Re-arrangement of. R.S.O. 1914, c. 164, s. 5.

Election of
members of
Council.

5. An election of members of the Council shall be held on the first Wednesday in August in every second year and the persons qualified to vote in any electoral district at the election shall be every member of the College who on the 1st day of June in such election year resides in the Province of Ontario and who is carrying on the business of a retail chemist in such electoral district as a proprietor thereof or as a registered manager of a retail incorporated company carrying on such business and who is liable to pay and has paid on or before the said last mentioned date the annual fee under this Act. 1924, c. 43, s. 3.

Local
qualification.

6.—(1) One member of the Council shall be elected for each electoral district. R.S.O. 1914, c. 164, s. 7 (1); 1924, c. 43, s. 4.

Manner of
election.

(2) The manner of holding such election, with respect to notification of the electors of the time and place of holding the election, the nomination of candidates, the presiding officer thereat, the taking and counting of the votes, the giving of a casting vote in case of an equality of votes, and other necessary details shall be determined by by-law of the Council, and in default of such by-law may be prescribed by the Lieutenant-Governor in Council. R.S.O. 1914, c. 164, s. 7 (2).

Resignations,
vacancies.

7. A member of the Council may at any time resign by notice in writing to the registrar of the College; and in the event of such resignation or in the event of a vacancy occurring, the remaining members of the Council shall appoint a member of the College carrying on business in the electoral district in the representation of which the vacancy occurs to fill the same. R.S.O. 1914, c. 164, s. 8.

President
and officers.

8. The Council shall, at their first meeting, elect from among themselves a president and a vice-president, and shall appoint a registrar and such other officers as the Council may consider necessary. R.S.O. 1914, c. 164, s. 9.

Meetings of
the Council.

9.—(1) The Council shall hold at least two meetings for the transaction of general business in every year, on the first Monday in June and the third Monday in November, at such place as they may by resolution appoint.

Notice of
meetings.

(2) Unless otherwise provided by by-law of the Council notice of such two meetings shall be given once a week for at least four weeks in the *Ontario Gazette*, and in at least two newspapers published in the City of Toronto. R.S.O. 1914, c. 164, s. 10.

POWERS OF COUNCIL.

10.—(1) The Council may establish and carry on a school of instruction and appoint such professors, lecturers, instructors, officers, servants and employees therefor as may be deemed necessary. Powers of Council as to school of instruction.

(2) The school now established and carried on by the Council in the City of Toronto may be continued. R.S.O. 1914, c. 164, s. 11. School continued.

11.—(1) Subject to the disallowance thereof by the Lieutenant-Governor in Council, the Council may prescribe the subjects upon which candidates for certificates of competency shall be examined, and a curriculum of studies to be pursued by the students, establish a scale of fees, not to exceed \$25, to be paid by persons applying for examination, make by-laws, rules and orders for the regulation of its own meetings and proceedings and those of the College, and for the discipline, suspension or expulsion for cause of any student, and for suspension for cause of any apprentice from serving under his contract of apprenticeship for a period not exceeding one year, and for the remuneration and appointment of examiners and officers, of the College, for defining the duties of such examiners and officers, for the payment of remuneration or indemnity to the members of the Council, for attending its meetings or upon the business of the College, and in respect to any other matters which the Council may deem requisite for the carrying out of the provisions of this Act. R.S.O. 1914, c. 164, s. 12 (1); 1924, c. 43, s. 5; 1927, c. 28, s. 15 (1). Curriculum for students. Discipline. Remuneration of members.

(2) Not more than five cents per mile for travelling expenses, or more than \$10 per diem for such days as a member is in actual attendance at a meeting of the Council, or at any meeting mentioned in subsection 3 or upon the business of the College including going to and returning therefrom, shall be allowed to him for such expenses and remuneration. Allowances to members.

(3) The Council may appoint, from time to time, one or more representatives to attend meetings of inter-provincial or other pharmaceutical associations, and may pay out of the College funds to any one or more of such associations such sums as it may deem proper. R.S.O. 1914, c. 164, s. 12 (2, 3). Appointment of representative to attend inter-provincial associations.

12. The examinations of the College may be conducted by the members of the Council, or by persons appointed by the Council. R.S.O. 1914, c. 164, s. 13. Who may examine.

WHO MAY APPLY FOR CERTIFICATES.

Qualification
of candidates
for certi-
ficates of
competency.

13.—(1) Subject to the rules, regulations and by-laws, the following persons and no others may be admitted as candidates for certificates of competency:

- (a) Any person who has registered as an apprentice prior to the 23rd day of March, 1889, and who furnishes to the Council satisfactory evidence of having, in pursuance of a binding contract in writing for that purpose, approved of by the Council, served as an apprentice to a regularly qualified pharmaceutical chemist for a term of not less than three years; R.S.O. 1914, c. 164, s. 14 (1) (a); 1924, c. 43, s. 6.
- (b) Any person of the full age of twenty-one years, registered as an apprentice on or after the 23rd day of March, 1889, who furnishes to the Council satisfactory evidence of having so served as an apprentice for a term of not less than four years and who has attended two courses of lectures at the school, comprising pharmacy, practical pharmacy, chemistry, practical chemistry, materia medica, botany and reading and dispensing prescriptions, and such other subject or subjects as the Council may from time to time deem advisable. R.S.O. 1914, c. 164, s. 14 (1) (b).

Term of
apprentice-
ship
how calcu-
lated.

(2) The period occupied in attending the first of the two courses of lectures may be counted as part of the term of apprenticeship.

Provision for
death, etc., of
employer.

(3) If any person, by reason of the death, failure in business, or removal of his employer, or from any other cause satisfactory to the Council, is unable to complete his term of apprenticeship he may enter into a new contract to complete the remainder of his unfulfilled term with any other regularly qualified pharmaceutical chemist.

Case of
apprentices
prior to 25th
March, 1884.

(4) Nothing in this section shall apply to any person who had, prior to the 25th day of March, 1884, begun his apprenticeship with a regularly qualified pharmaceutical chemist without such binding contract in writing. R.S.O. 1914, c. 164, s. 14 (2-4).

PRELIMINARY EXAMINATIONS.

Matricula-
tion, require-
ments as to.

14.—(1) Every person desirous of becoming apprenticed shall before the term of his apprenticeship begins send to the registrar the sum of \$1 together with a certificate showing that the applicant has passed the examination required for Ontario university matriculation, or possesses academic qualifications in the opinion of the Council equal to that of Ontario university matriculation.

(2) Upon complying with the provisions of this section the applicant shall be entitled to be registered as an apprentice. Applicant to be entitled to be registered.
1924, c. 43, s. 7.

REGISTRATION.

15. The registrar shall keep a register (Form 1) of all persons entitled to be registered as pharmaceutical chemists under this Act, and shall enter opposite the names of all registered persons who have died a statement of that fact, and shall make all necessary alterations in the addresses of persons registered, and shall cause to be printed and published, on or before the 15th day of June of each year, an alphabetical list of the members who were on the 1st day of June of that year entitled to carry on business as pharmaceutical chemists. Registrar, how kept.
R.S.O. 1914, c. 164, s. 16.

16. Any person who has passed the prescribed examination to the satisfaction of the Council shall be entered upon the register, and shall become a member of the College. Registration and membership.
R.S.O. 1914, c. 164, s. 17.

17. All persons approved of by the Council who hold diplomas from the Pharmaceutical Society of Great Britain, or certificates from any Pharmaceutical College in the Dominion of Canada or elsewhere, may be registered as members of the College without the examination prescribed by this Act. Idem. Diplomas from other societies.
R.S.O. 1914, c. 164, s. 18.

18. No name shall be entered in the register unless the registrar is satisfied by proper evidence that the person claiming is entitled to be registered; and any appeal from the decision of the registrar shall be decided by the Council; and any entry proved to the satisfaction of the Council to have been fraudulently or incorrectly made, may be erased from or amended in the register by order of the Council. Who may be entered on the register. Appeal from decision of the registrar. Correction of fraudulent entries.
R.S.O. 1914, c. 164, s. 19.

19. Upon a person being registered he shall be entitled to receive a certificate (Form 2) under the corporate seal of the College, and signed by the registrar, and such certificate shall be *prima facie* evidence in all courts, and upon all proceedings of whatever kind of its execution and contents. Certificate of registration. Evidence.
R.S.O. 1914, c. 164, s. 20.

20.—(1) There shall be payable to the registrar, for the use of the College, on the 1st day of May of each year or such other day as the Council may fix by by-law, by every person registered and carrying on business as a pharmaceutical chemist and by every registered director and registered manager of an incorporated company carrying on the business of a pharmaceutical chemist such sum not exceeding \$6 as may be Annual fees.

determined by by-laws of the Council, and if such person or incorporated company carries on business in more than one shop each such person and his registered manager and each registered director and registered manager of such incorporated company shall pay a further sum, not exceeding \$6, as provided by the by-laws of the Council, for each additional place of business carried on. R.S.O. 1914, c. 164, s. 21 (1); 1924, c. 43, s. 8 (1).

Business to
be managed
by register-
ed chemist.

(2) Every place of business of a retail druggist or chemist and every branch thereof shall be personally managed by a pharmaceutical chemist registered under this Act. 1924, c. 43, s. 8 (2).

Who alone
may act as
pharma-
ceutical
chemist.

21. Any person registered under section 16, and no other person, shall be entitled to be called a pharmaceutical chemist, and no person except a pharmaceutical chemist, or his registered apprentice, shall compound prescriptions of medical practitioners; but no person shall be entitled to any of the privileges of a pharmaceutical chemist, or of a member of the College, who is in default in respect to any fees payable by him by virtue of this Act. R.S.O. 1914, c. 164, s. 22.

Erasing
name of
member on
conviction
of offence.

1911, c. 17,
(Dom.)
Rev. Stat.
c. 257.

22.—(1) Upon a resolution of the Council being passed declaring that any person in consequence of his conviction of a crime, or of an offence against *The Opium or Narcotic Drug Act* or an offence against *The Liquor Control Act (Ontario)*, or an offence against this Act, is in the opinion of the Council unfit to be on the Register, the Council may direct that the name of such person shall be erased therefrom and the Registrar shall erase the same accordingly, and his certificate authorizing him to carry on the business of a pharmaceutical chemist shall *ipso facto* be void and be of no force or effect for such period not exceeding two years in the case of a person convicted of a crime or an offence against *The Opium or Narcotic Drug Act* and not exceeding one year in the case of a person convicted of an offence against *The Liquor Control Act (Ontario)*, or this Act, as the Council shall determine by such resolution or until the Council of the said College shall see fit at its discretion after the expiration of such period to re-instate such pharmaceutical chemist who shall not in the meantime be appointed or act as the employee, clerk, manager or director of, or vote or otherwise interfere as a shareholder in the business of any incorporated company dealing in drugs or medicines under this Act; provided, however, that during the period between the Council meetings a committee of the Council consisting of the president, the chairman of the by-laws and legislation committee and the chairman of the infringement committee thereof may suspend the certificate of registration of such person so convicted until the next meeting of the Council when the same may be considered by the Council and dealt with as in this section provided, and during such

suspension the person so convicted shall not be entitled to carry on the business of a pharmaceutical chemist nor shall he be appointed or act as the employee, clerk, manager or director of, or vote or otherwise interfere as a shareholder in the business of any incorporated company dealing in drugs or medicines under this Act.

(2) The Council may by resolution declare any apprentice convicted of any of the offences hereinbefore mentioned in this section unfit to serve under a contract of apprenticeship and that such apprentice be barred for a period of time not exceeding one year as the resolution shall provide, from service under his contract of apprenticeship; provided, however, that during the period between the Council meetings a committee of the Council consisting of the president, the chairman of the by-laws and legislation committee and the chairman of the infringement committee thereof may suspend from service under a contract of apprenticeship any apprentice so convicted until the next meeting of the Council when the same may be considered by the Council and dealt with as in this section provided.

(3) No action or other proceeding shall be brought or taken by or on behalf of any person convicted of any of the crimes or offences mentioned in subsection 1 of this section against the Council or any committee thereof for anything done or attempted in good faith under this section notwithstanding any want of form in the proceedings of the Council or of the committee. 1924, c. 43, s. 9.

23. Every pharmaceutical chemist carrying on business on his own account and every manager of each place of business shall display his certificate in a conspicuous position in such place of business, or the place of business which he manages. R.S.O. 1914, c. 164, s. 24; 1924, c. 43, s. 10.

24. Every person registered as a pharmaceutical chemist shall, on retiring from business, give the registrar notice in writing of the same, and his name shall be erased from the register, and he shall cease to enjoy any of the privileges of the College, and in default of such notice he shall remain liable for his annual registration fee; but any such person may resume business at any time after retiring therefrom upon giving notice in writing to the registrar of his intention so to do, and upon payment of the annual registration fee for the then current year. R.S.O. 1914, c. 164, s. 25.

25. Nothing in this Act shall prevent the executor or administrator or the trustee of the estate of any person legally authorized to carry on and actually carrying on the business of a pharmaceutical chemist at the time of his death from

Suspension
of service
of appren-
tice.

Person
convicted
not to
bring action
against
Council.

Certificate
to be
publicly
displayed.

Retirement
from
business

Resumption.

Executors,
etc., carry-
ing on busi-
ness of
deceased
chemist, etc.

continuing the business so long only as it is *bona fide* conducted by a pharmaceutical chemist registered under this Act if such executor, administrator or trustee continues to pay the annual registration fee. R.S.O. 1914, c. 164, s. 26.

PREPARATION OF COMPOUNDS.

How compounds are to be prepared.

26. Unless the label distinctly shows that the compound is prepared according to another formula every compound named in the British Pharmacopœia shall be prepared according to the formula directed in the latest edition published "by authority" until the College of Physicians and Surgeons of Ontario selects another standard and thereafter according to such standard. R.S.O. 1914, c. 164, s. 27.

SALE OF POISONS, DRUGS OR MEDICINES.

27. No person shall,

Restriction on sale of poisons, drugs or medicines.

Exceptions.

(a) sell or keep open shop for retailing, dispensing or compounding poisons, drugs or medicines except patent or proprietary medicines, (subject to section 41) and except turpentine, Epsom salts, senna, alum, borax, castor oil, sulphur, Glauber's salt, cream of tartar, carbonate of soda, bi-carbonate of soda, glycerine, carbonate of magnesia, citrate of magnesia, Rochelle salts, blue stone, copperas, saltpetre, spirits of nitre, rhubarb root, solution of ammonia, phosphate of soda, gum camphor, quinine, hydrogen peroxide, or chloride of lime, or sell or attempt to sell any of the articles mentioned in Schedule C; or

Assumption of title of "Chemist," etc.

(b) assume or use the title of "Chemist and Druggist," or "Chemist," or "Druggist," or "Pharmacist," or "Apothecary," or "Dispensing Chemist," or "Dispensing Druggist," or use the designation "Drug Store," "Pharmacy," "Drugs" or "Medicines," or any sign, title or advertisement, implying or calculated to lead the public to infer that he is registered under this Act;

unless such person is registered under this Act and has a certificate under section 19. R.S.O. 1914, c. 164, s. 28; 1923, c. 36, s. 2; 1924, c. 43, s. 11.

Shops kept by incorporated companies.

28. No incorporated company shall do any of the acts prohibited by the next preceding section unless the majority of the directors thereof are duly registered under this Act, and unless one of such directors personally manages and conducts such open shop, and has his name and certificate displayed in a conspicuous position therein, and no person

not so registered shall in any way interfere with or take part in the management and conduct of such shop, and anything done or omitted which would be an offence under this Act if done or omitted by an individual shall be an offence by each of such registered directors, and by such company, and the prosecution of any one or more of them shall not be a bar to the prosecution of the other or others. R.S.O. 1914, c. 164, s. 29.

29.—(1) Nothing in this Act shall prevent the sale by persons not registered of Paris green, hellebore, tincture of iodine, arsenate of lead, carbolic acid, not exceeding a five per centum solution, formaldehyde and London purple, if such articles are sold in well secured packages distinctly labelled with the name and address of the person preparing or putting up such packages and marked "poison." R.S.O. 1914, c. 164, s. 30 (1); 1920, c. 47, s. 2.

What poisons may be sold by any person and when.

(2) A record shall be kept by the vendor in a book for that purpose of the name and address of each person to whom such carbolic acid is sold. R.S.O. 1914, c. 164, s. 30 (2).

Entry of sale of carbolic acid.

30. Every incorporated company dealing in drugs or medicines under this Act shall before commencing business furnish the registrar with the name and address of each of its directors and thereafter if any change is made in such directors shall forthwith furnish the registrar with the names and addresses of any new directors. 1924, c. 43, s. 12.

Names and addresses of directors.

31. The articles mentioned in Schedule C shall be deemed to be poisons within the meaning of this Act, and the Council may by resolution declare that any article in the resolution named ought to be deemed a poison within the meaning of this Act, and thereupon the Council shall submit the resolution for the approval of the Lieutenant-Governor in Council, and if approved, such resolution and the approval thereof shall be published in the *Ontario Gazette*, and on the expiration of one month from such publication the article named in the resolution shall be deemed to be a poison within the meaning of this Act, and the same shall be subject to the provisions thereof, or such of them as may be directed by the Lieutenant-Governor in Council. R.S.O. 1914, c. 164, s. 32.

Certain articles to be deemed poisons.

32.—(1) No person or incorporated company shall sell any poison, either by wholesale or retail, unless the box, bottle, vessel, wrapper or cover in which the poison is contained is distinctly labelled with the name of the article and the word "poison," and if sold by retail, then also with the name and address of the proprietor of the establishment in which such poison is sold; and no person shall sell any poison of those which are in the first part of Schedule C, or may hereafter be added thereto under section 31, to any person unknown

Certain poisons to be sold only in a certain manner.

Regulations to be observed in the sale of poisons.

to the seller unless introduced by some person known to the seller, and on every sale of any such article the person actually selling the same shall, before delivery, make an entry, Form 3, in a book to be kept for that purpose, stating the date of the sale, the name and address of the purchaser, the name and quantity of the article sold, the purpose for which it is stated by the purchaser to be required, and the name of the person who introduced him, to which entry the signature of the purchaser shall be affixed. R.S.O. 1914, c. 164, s. 33 (1).

Sale of
carbolic
acid by
retail.

(2) In addition to the requirements of subsection 1, carbolic acid, above a five per centum solution, shall not be sold by retail except,—

- (a) in a glass bottle of light blue colour having six sides, the front being of plain surface, upon which the label shall be placed, and two opposite sides having blown on them the words “poison,” “use with caution,” and prominent points on the other portion of the surface thereof in such a manner as to render the bottle distinguishable to the touch from ordinary bottles; or
- (b) in such other bottle as may be authorized by the Council from time to time by regulation approved of by the Lieutenant-Governor in Council; and
- (c) subject to such other regulations as may be enacted by by-law of the Council approved of by the Lieutenant-Governor in Council. 1915, c. 28, s. 4.

Exceptions.

Imp.
Act 31 and
32 V. c. 121,
s. 17.

(3) Nothing in this section shall apply to any article when forming part of the ingredients of any medicine prescribed by a legally qualified medical practitioner if the medicine is labelled with the name and address of the seller and the ingredients thereof are entered with the name of the person to whom it is sold or delivered in a book to be kept for that purpose. R.S.O. 1914, c. 164, s. 33 (3); 1915, c. 28, s. 3.

Books to be
open to in-
spection by
constables
and agent
of college.

33. Any book by this Act required to be kept shall be open to inspection by any police officer or constable, or any authorized agent of the College. R.S.O. 1914, c. 164, s. 34.

OFFENCES AND PENALTIES.

Selling to
include
giving, fur-
nishing or
disposing
of poisons.

34. The prohibitions, restrictions and provisions contained in this Act as to selling poisons shall extend to exhibiting or offering for sale, or giving, furnishing or otherwise disposing of them. R.S.O. 1914, c. 164, s. 35.

Penalties
on wrongful
sales.

35. No person shall wilfully or knowingly sell any article under the representation or pretence that it is a particular drug or medicine which it is not, and any person so doing, in addition to any other penalty to which he may be liable, shall incur the penalty prescribed by section 36. R.S.O. 1914, c. 164, s. 36.

36.—(1) Any person or incorporated company who contravenes any of the provisions of this Act, shall for the first offence incur a penalty of not less than \$20 nor more than \$100 and for each offence committed subsequent to conviction for such first offence a penalty of not less than \$50 nor more than \$200, such penalties to be recoverable under *The Summary Convictions Act*, and the amounts recovered shall be paid over by the convicting magistrate or justice to the registrar for the use of the College. 1924, c. 43, s. 13.

Penalties.

Rev. Stat.
c. 121.

(2) The College shall forthwith refund so much of the penalty as has been received by the registrar in any case upon an order to that effect being passed by the Lieutenant-Governor in Council. 1917, c. 35, s. 8.

Application
of penalties.

37. In any prosecution under this Act the burden shall rest on the defendant to prove that he is registered and holds a certificate under this Act, and to give evidence sufficient *prima facie* to prove that no unregistered person who personally takes any part in selling or dispensing drugs or medicines is interested with him in his sales thereof. R.S.O. 1914, c. 164, s. 38.

Onus of
proof.

38. A person who sells any article in violation of the provisions of this Act shall not be entitled to recover any charges in respect thereof. R.S.O. 1914, c. 164, s. 39.

Price of
articles sold
contrary to
this Act not
to be
recovered.

ACT NOT TO AFFECT MEDICAL PRACTITIONERS.

39. Nothing in this Act shall affect or interfere with the rights and privileges conferred upon a legally qualified medical practitioner by *The Medical Act*, and where such medical practitioner desires to carry on the business of a pharmaceutical chemist, as defined by this Act, he shall not be required to pass the examination prescribed by the College, but he shall register as a pharmaceutical chemist and comply with all other requirements of this Act. R.S.O. 1914, c. 164, s. 40.

Saving as to
qualified
medical
practitioners,
etc.Rev. Stat.
c. 196.

40. Nothing in this Act shall prevent any person from selling goods of any kind to a pharmaceutical chemist or to a legally qualified medical practitioner or to a veterinary surgeon, or shall prevent a legally qualified medical practitioner or a veterinary surgeon from supplying such medicine as he may prescribe, or, except as provided by section 30, shall interfere with the business of wholesale dealers in supplying poisons, or other articles in the ordinary course of wholesale dealing. R.S.O. 1914, c. 164, s. 41.

Sales to
chemists,
etc., not
affected.

41.—(1) Nothing in this Act shall interfere with or affect the making or dealing in any proprietary or patent medicine.

Selling
patent
medicines.

(2) The words "proprietary or patent medicine" in this Act shall have the meaning and be defined as in *The Proprietary and Patent Medicine Act* being chapter 56 of the Statutes of the Dominion of Canada, 1908. 1924, c. 43, s. 14.

"Proprie-
tary or
patent
medicine,"
meaning of
1908,
(Dom.)
c. 56,

HONORARY MEMBERS.

Honorary
membership.

42. The Council may elect as honorary members of the College such persons as they may deem eminent for scientific attainments, but no such honorary member shall be entitled to vote at elections or carry on the business of pharmaceutical chemists unless registered as a pharmaceutical chemist. R.S.O. 1914, c. 164, s. 43.

DIVISION ASSOCIATIONS.

Division
associations
and
electoral
districts.

43. In each of the electoral districts there may be established a division association, which may be called the "Division Association" of such district, of which every member of the College residing in such district shall be a member, and each representative in the Council shall be *ex-officio* chairman of such division association. R.S.O. 1914, c. 164, s. 44.

 SCHEDULE A.

(Section 4 (1).)

ELECTORAL DISTRICTS.

No. 1 Division.—The Counties of Glengarry, Prescott, Stormont, Russell, Renfrew, Dundas, Carleton, Lanark and Grenville.

No. 2 Division.—The Counties of Leeds, Frontenac, Lennox and Addington, Prince Edward and Hastings.

No. 3 Division.—The Counties of Northumberland, Durham, Peterborough, Victoria, Haliburton and Ontario.

No. 4 Division.—That portion of the City of Toronto east of Spadina Avenue and Spadina Road.

No. 5 Division.—That portion of the City of Toronto west of Spadina Avenue and Spadina Road.

No. 6 Division.—The Counties of Simcoe and York and the Districts of Parry Sound and Muskoka.

No. 7 Division.—The Counties of Wellington, Halton, Peel, Dufferin and Perth.

No. 8 Division.—The Counties of Wentworth, Lincoln and Welland.

No. 9 Division.—The Counties of Brant, Waterloo, Haldimand and Norfolk.

No. 10 Division.—The Districts of Rainy River, Thunder Bay, Algoma, Nipissing, Sudbury, Temiskaming, Kenora and Manitoulin.

No. 11 Division.—The Counties of Elgin, Middlesex and Oxford.

No. 12 Division.—The Counties of Huron, Grey and Bruce.

No. 13 Division.—The Counties of Lambton, Kent and Essex.

R.S.O. 1914, c. 164, Schedule A.

SCHEDULE B.

Forms.

FORM 1.

(Section 15.)

REGISTER.

Name	Residence	Qualifications	Remarks
A. B.	Kingston.	In business for three years prior to (date).	Dead.
C. D.	Toronto.	Examined and Certified, (date).	Erased by order of the Lieut.-Gov., (date).
E. F.	London.	Served apprenticeship and as assistant.	

R.S.O. 1914, c. 164, Form 1.

FORM 2.

(Section 19.)

CERTIFICATE OF REGISTRATION.

I hereby certify that *C. D.* having complied with the requirements of The Pharmacy Act, was on the day of , A. D. 19 , duly registered as a Pharmaceutical Chemist, and is authorized to carry on the business of Chemist and Druggist in the Province of Ontario, from the day of , 19 , to the day of , 19 .

R. F.,
Registrar of the Ontario College of Pharmacy.

[Corporate Seal]

R.S.O. 1914, c. 164, Form 2.

FORM 3.

(Section 32.)

ENTRY OF SALE.

Date	Name of purchaser.	Name and quantity of poison sold.	Purpose for which it is required.	Signature of purchaser.	Address of purchaser.	Name of person introducing purchaser.	Name of Medical practitioner on whose prescription furnished.

R.S.O. 1914, c. 164, Form 3.

SCHEDULE C.

(Section 27.)

PART I.

Acid, Hydrocyanic (Prussic),
 Aconite, and preparations and
 compounds thereof,
 Antimony, Tartarated (Tartar
 Emetic),
 Arsenic, and preparations and
 compounds thereof, except
 Paris Green,
 Atropine,
 Carbolic Acid, exceeding a five
 per centum solution,
 Chloral Hydrate,
 Cocaine, and its salts or any ad-
 mixture thereof.
 Codeine,
 Digitalin,
 Ergot, and preparations and com-
 pounds thereof,

Eucaïne, and its salts or any ad-
 mixture thereof,
 Heroin,
 Indian Hemp,
 Mercury Bichloride (Corrosive
 Sublimate),
 Morphine and its Salts, or any
 admixture thereof,
 Nux Vomica,
 Oil of Cedar,
 Opium, including crude opium,
 powdered opium, or opium pre-
 pared or in course of prepara-
 tion for smoking.
 Savin and all preparations there-
 of,
 Strychnine and its salts,
 Veratrine.

PART II.

Acetanilide (Antifebrin),	Mercury and preparations,
Acid, Oxalic,	Oil of Bitter Almonds,
Antimony, preparations of,	Oil of Pennyroyal and preparations,
Antipyrine,	Oil of Tansy,
Belladonna, and preparations	Phenacetin,
and compounds thereof,	Phosphorous in a free state,
Calabar Beans,	Pink Root,
Cantharides,	Podophyllin
Chloroform,	(Resin Podophyllin),
Columbian Spirits,	Potassium Bromide,
Conium and preparations thereof,	Potassium Cyanide,
Cotton Root and preparations thereof,	Potassium Iodide,
Cocculus Indicus (Fish Berry),	Rue and all preparations,
Creosote,	St. Ignatius Beans,
Croton Oil and Seeds,	Santonin,
Elaterium,	Sabadilla Seeds,
Ether,	Scammony,
Euphorbium,	Sulfonal,
Formaldehyde (Formalin),	Trional,
Goulard's Extract,	Veronal,
Hyoscyamus and preparations,	Valerian,
Iodine and preparations,	Verdigris,
Laudanum, but not paragoric,	Zinc, Sulphate.

R.S.O. 1914, c. 164, Schedule B; 1917, c. 35, ss. 9, 10.

CHAPTER 200.

The Drugless Practitioners Act.

Interpreta-
tion.**1.** In this Act,—

“Board.”

(a) “Board” shall mean Board of Regents appointed under this Act;

“Drugless
Practi-
tioner.”

(b) “Drugless Practitioner” shall mean and include every person who practises or advertises or holds himself out in any way as practising the treatment of any ailment, disease, defect or disability of the human body by manipulation, adjustment, manual or electro-therapy or by any similar method;

“Regula-
tions.”

(c) “Regulations” shall mean regulations made under the authority of this Act. 1925, c. 49, s. 2.

Board of
Regents
established

2.—(1) There shall be established a Board to be known as the Board of Regents to be composed of five persons to be appointed by the Lieutenant-Governor in Council.

Term
of office.

(2) Of the members of the Board first appointed, two shall hold office for a period of two years and three shall hold office for a period of one year, and thereafter every member appointed shall hold office for a period of two years, but any member shall be eligible for reappointment at the expiration of his term of office.

Vacancies.

(3) Every vacancy on the Board caused by the death, resignation or incapacity of a member shall be filled by the appointment of a person to hold office for the remainder of the term of such member.

Chairman,
vice-chair-
man and
secretary-
treasurer.

(4) The Lieutenant-Governor in Council shall designate from time to time one of the members to be chairman, one to be vice-chairman and one to be secretary-treasurer of the Board. 1925, c. 49, s. 3.

Regula-
tions.

3. The Board with the approval of the Lieutenant-Governor in Council may make regulations,—

(a) for the admission of drugless practitioners to practise in Ontario and for the registration of all persons so admitted;

- (b) prescribing the qualifications of persons so to be admitted and the proofs to be furnished as to education, good character and experience;
- (c) for maintaining a register of persons so admitted to practise and providing for the annual renewal of registration and prescribing the fees payable thereon;
- (d) prescribing the discipline and control of registered drugless practitioners;
- (e) for classifying persons admitted to practise under this Act and for prescribing the systems of treatment which may be followed by drugless practitioners of different classes;
- (f) for designating the manner in which any person registered under this Act may describe his qualification or occupation and prohibiting the use of any title, affix or prefix which in the opinion of the Board is calculated to mislead the public as to the qualification of any such person and for allowing the use of any affix or prefix not forbidden by section 49 of *The Medical Act* which in the opinion of the Board will correctly describe the qualification or occupation of such person; Rev. Stat. c. 196.
- (g) for the investigation of any complaint that a registered drugless practitioner has been guilty of misconduct or displayed such ignorance or incompetence as to render it desirable in the public interest that his registration should be cancelled or suspended;
- (h) for the cancellation or suspension of the registration of any person found by the Board to be guilty of misconduct or to have been ignorant or incompetent;
- (i) generally for the better carrying out of the provisions of this Act. 1925, c. 49, s. 4.

4. Nothing in this Act or the regulations shall authorize any person not being so expressly authorized under a general or special Act of this Legislature to prescribe or administer drugs for use internally or externally or to use or direct or prescribe the use of anaesthetics for any purpose whatsoever or to practise surgery or midwifery. 1925, c. 49, s. 5. Act not to authorize general practice of medicine.

5. Every person who, not being registered as a drugless practitioner under this Act or who having been so registered and whose registration has been cancelled or is under suspension, practises or holds himself out as practising as a drugless practitioner within the meaning of this Act, or who Penalty for unauthorized practice.

advertises or uses or affixes any prefix to his name signifying that he is qualified to practise as a drugless practitioner within the meaning of this Act shall be guilty of an offence and shall incur a penalty to be recoverable under *The Summary Convictions Act* not exceeding \$100 and upon conviction for a subsequent offence within a period of two years after such first conviction shall be imprisoned for a period not exceeding three months. 1925, c. 49, s. 6.

Rev. Stat.
c. 121.

Saving.

6. Nothing in this Act contained shall apply to or affect,—

Practising
under other
Acts.

(a) the practice of any profession or calling by any person practising the same under the authority of a general or special Act of this Legislature;

Nurses.

(b) any nurse acting in the absence of, or under the prescription or direction of a legally qualified medical practitioner;

First aid.

(c) the furnishing of first aid or temporary assistance in cases of emergency;

Treating by
prayer.

(d) persons treating human ailments by prayer or spiritual means as an enjoyment or exercise of religious freedom. 1925, c. 49, s. 7.

Compliance
with other
statutes not
affected.

7. Nothing in this Act or the regulations shall be taken or deemed to relieve any person from compliance with the provisions of *The Public Health Act* or *The Vaccination Act* or any amendment to either of them, or from compliance with the provisions of *The Vital Statistics Act* or any amendment thereto or from any legal duty to provide for the treatment of any person by a legally qualified medical practitioner. 1925, c. 49, s. 8.

Rev. Stat.
cc. 262,
263, 78.

Penalties,
how
recoverable.

8. Penalties imposed by or under the authority of this Act shall be recoverable under *The Summary Convictions Act*. 1925, c. 49, s. 9, *part*.

Rev. Stat.
c. 121.

4. SURVEYORS AND LAND SURVEYING.

CHAPTER 201.

The Land Surveyors Act.

INTERPRETATION.

1. In this Act,

Interpreta-
tion.

(a) "Minister" shall mean the Minister of Lands and Forests; "Minister."

(b) "Surveyor" shall mean Ontario land surveyor. "Ontario
R.S.O. 1914, c. 165, s. 2. land sur-
veyor."

REGISTRATION OF LAND SURVEYORS.

2.—(1) No person shall act as a surveyor of land in Ontario unless duly authorized to practise as a land surveyor according to the provisions of this Act, or so authorized before the passing thereof according to the laws then in force, and unless registered under the provisions of this Act. Who may
act as land
surveyor.

(2) Any person who contravenes this section shall incur a penalty of \$40. Penalty. R.S.O. 1914, c. 165, s. 3.

ASSOCIATION OF ONTARIO LAND SURVEYORS.

3.—(1) The Association of Ontario Land Surveyors hereinafter called "the Association" is hereby continued; and all persons who are now members of the Association shall continue to be members thereof subject to the by-laws of the Association and the provisions of this Act. Association
continued.

(2) All persons duly authorized to practise as land surveyors shall, upon becoming duly registered as hereinafter provided, become members of the Association. New
members. R.S.O. 1914, c. 165, s. 4.

4. The Association may purchase, take and possess for the purposes of the Association, but for no other purpose, and after acquiring the same may sell, mortgage, lease or dispose of any real estate. Powers as
to real
estate. R.S.O. 1914, c. 165, s. 5.

Fines and
fees.

5. All fines and fees payable under this Act, or under any by-law of the Association, shall belong to the Association. R.S.O. 1914, c. 165, s. 6.

By-laws.

6.—(1) The Association may pass by-laws for—

- (a) the government, discipline and honour of its members;
- (b) the management of its property;
- (c) the examination and admission of candidates for the study or practice of the profession; and
- (d) all such other purposes as may be necessary for carrying out the objects of the Association.

Ratification.

(2) All by-laws shall be passed by the Council hereinafter provided for, and shall be ratified by the Association at the next annual general meeting, or at a special general meeting called for the purpose. R.S.O. 1914, c. 165, s. 7.

Council of
Management.

7.—(1) There shall be a Council of Management of the Association, hereinafter called “the Council,” consisting of the Minister, the president and the vice-president of the Association, and six other elective members to be elected and hold office as hereinafter provided.

Chairman
and
officers.

(2) The Council shall elect annually one of its members as its chairman, and shall appoint from among the members of the Association such other officers as may be deemed necessary for carrying out the objects of this Act, who shall hold office during the pleasure of the Council. R.S.O. 1914, c. 165, s. 8.

Annual
general
meeting.

8.—(1) The annual general meeting of the Association shall be held in the City of Toronto on the third Tuesday of February in each year at such place as the Council may appoint.

Notice.

(2) Notice of such meeting shall be given by the secretary-treasurer to each member of the Association by letter posted to his registered address at least ten days before such meeting. R.S.O. 1914, c. 165, s. 9.

President
and officers
of Association.

9.—(1) The members of the Association shall elect annually from among their number a president, vice-president, secretary-treasurer, two auditors and two members of the Council, and the secretary-treasurer shall also act as secretary of the board of examiners.

Election at
annual
meeting.

(2) The president, vice-president, secretary-treasurer, auditors and two members of the Council may be elected at the annual general meeting in each year, if their election is unanimous.

(3) If the election of any of such officers or members is not unanimous and a ballot is demanded by any member of the Association entitled to vote at such election the president, or in his absence the vice-president, or in the absence of both the secretary-treasurer, shall appoint two scrutineers to count the ballots, and the secretary-treasurer shall at such meeting receive nominations of candidates in respect of whom a ballot has been demanded, and the election shall take place in the manner hereinafter provided.

(4) All elections which are not unanimous shall be by ballot, and shall be conducted in the manner provided by the by-laws of the Association. R.S.O. 1914, c. 165, s. 10.

10. Within one week after the meeting at which a ballot was demanded the secretary-treasurer shall send by post to each member of the Association, when his address is known, a voting paper (Form 1) with a list of the names of all candidates nominated, and also a list of the retiring members, and every vote cast for a person not so nominated shall be void. R.S.O. 1914, c. 165, s. 11.

11. The votes shall be given by closed voting papers (Form 1) which shall be delivered to the secretary-treasurer at his office, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon, on any day between the second Tuesday of March and the first Tuesday of April in the year in which the election is held, and any voting papers received by the secretary-treasurer by post during that time shall be deemed to be delivered to him for the purposes of the election. R.S.O. 1914, c. 165, s. 12.

12.—(1) The voting papers shall, upon the first Thursday after the first Tuesday of April, be opened by the secretary-treasurer in the presence of the scrutineers, who shall examine and count the votes and keep a record thereof in a book to be provided by the Council.

(2) Any person entitled to vote at the election may be present at the counting of the votes.

(3) The qualified persons who have the highest number of votes shall be declared elected. R.S.O. 1914, c. 165, s. 13.

13.—(1) In case of equality of votes between two or more persons which leaves the election of one or more officers or members of the Council undecided, the scrutineers shall forthwith put into a ballot box a number of papers with the names of the candidates respectively having such equality of votes written thereon, one for each candidate, and the secretary-treasurer shall draw from the ballot box, in the presence of the scrutineers, one or more of the papers sufficient to make up the required number, and the person or persons whose

name or names are upon the papers so drawn shall be the officer or officers, or the members of the Council, as the case may be.

Declaration
of result.

(2) Upon the completion of the counting of the votes the secretary-treasurer shall forthwith declare the result of the election and shall, as soon as conveniently may be, report the same in writing signed by himself and by the scrutineers to the president. R.S.O. 1914, c. 165, s. 14.

Where vot-
ing paper
has too
many
names.

14. In the event of an elector placing more than the required number of names upon the voting paper for members of the Council the first names only, not exceeding the required number shall be counted. R.S.O. 1914, c. 165, s. 15.

Qualifica-
tion of
voters.

15.—(1) The persons qualified to vote shall be such persons as are members of the Association and have paid all fees due from them to the Association.

Of officers.

(2) No person shall be eligible for election to any office or to the Council, or qualified to fill any vacancy thereon, or to appointment by the Council to any office, unless his fees have been paid and he is duly qualified under the provisions of this Act and the by-laws of the Association. R.S.O. 1914, c. 165, s. 16.

Term of
office of
members of
council.

16.—(1) Except in the case of an appointment to fill the vacancy caused by the resignation, death or dismissal of a member of the Council all elected members of the Council shall hold office for three years and until their successors shall have been elected.

Vacancies.

(2) In case of the resignation, death or dismissal of the president, vice-president, or any elective member of the Council the other members of the Council shall have power to fill any vacancy so caused, and the person so appointed shall hold office for the unexpired portion of the term. R.S.O. 1914, c. 165, s. 17.

Disputed
elections.

17. In case of doubt or dispute as to who has been elected or as to the legality of the election, the duly elected officers and members shall be a committee to enquire and decide the doubt or dispute, and the persons whom they decide to have been elected shall be deemed to have been duly elected, and if the election is found to have been illegal the committee shall order a new election. R.S.O. 1914, c. 165, s. 18.

BOARD OF EXAMINERS.

Board of
Examiners.

18.—(1) There shall be a board of examiners, hereinafter called "the board," for the examination of candidates for admission to study, and also for such other examinations as the Council may prescribe for candidates for admission to practise as surveyors.

(2) The board shall consist of the chairman of the Council, the secretary-treasurer, four other members of the Association to be appointed by the Council and two to be appointed by the Lieutenant-Governor in Council. Of whom Board to consist.

(3) The six members to be so appointed shall hold office for three years. Term of office.

(4) In case of the resignation, death or inability to act of any member of the board, the Lieutenant-Governor in Council, if such member was appointed by him, and the council, if such member was appointed by it, shall appoint a member of the Association to be a member of the board of examiners for the unexpired portion of the term. To supply vacancies.

(5) The chairman of the Council shall be the chairman of the board, and three members of the board shall form a quorum. Chairman. Quorum.

(6) The Council may also appoint competent persons to assist the board in any of the subjects of examination, and may fix the expenses and fees to be paid to any of the examiners, subject to the restrictions hereinafter contained in respect of payments to members of the board. Examiners.

(7) Each member of the board shall take and subscribe the following oath:— Oath of examiner.

I, of having been appointed a member of the Board of Examiners under *The Land Surveyors Act*, do sincerely promise and swear that I will faithfully discharge the duties of such office without favour, affection or partiality. So help me God.

A.B.

Sworn before me at
this day of 19 .

R.S.O. 1914, c. 165, s. 19.

19. The board shall meet at the office of the Minister on the first Monday of February in every year, and may adjourn such meeting from time to time. R.S.O. 1914, c. 165, s. 20. Meetings, when and where to be held.

20. The Council shall, for each day's attendance, pay out of the funds of the Association to each member of the board who attends any examinations such sum, not less than \$6 nor more than \$8, as the Council may by by-law determine, and his travelling expenses. R.S.O. 1914, c. 165, s. 21. Payment of examiners.

21.—(1) No person shall be admitted as an apprentice to a surveyor unless he has previously passed an examination to the satisfaction of the board in penmanship, orthography, English grammar, arithmetic, algebra (including square-root, logarithms and quadratic equations), Euclid (first four books and deductions), plane trigonometry mensuration, practical geometry (including the use of ruling-pen and the construction of plane and comparative scales), Canadian and general Admission to apprenticeship.

geography and Canadian history, and has obtained a certificate of his examination and of his proficiency from the board.

(2) The board may accept in lieu of examination, a certificate of junior matriculation or other certificate or credentials that in its opinion show the candidate to be of sufficient educational standing. 1925, c. 51, s. 2.

Examina-
tion and
certificate
fees.

22. Every applicant shall, before being so examined, pay to the secretary-treasurer of the Association the prescribed fees for the examination and certificate. R.S.O. 1914, c. 165, s. 23.

Notice to be
given by
applicants.

23. Every applicant for examination previous to apprenticeship shall give one month's notice to the secretary-treasurer of his intention to present himself for examination, and shall pay to the secretary-treasurer the prescribed fee for receiving and entering such notice. R.S.O. 1914, c. 165, s. 24.

QUALIFICATION FOR ADMISSION TO PRACTISE.

Qualifica-
tion for
admission
to practise.

24. Every candidate for admission to practise as an Ontario land surveyor shall have passed an intermediate examination in the subjects of geometry, plane trigonometry, spherical trigonometry, algebra and mensuration as prescribed by the board and such examination shall be passed by the candidate at least one year prior to presenting himself for final examination. 1924, c. 44, s. 2, *part*.

Final
examination.

25. Except as hereinafter provided no person shall be admitted to practise as a surveyor until he has attained the age of twenty-one years and has passed the examination mentioned in section 24 and has also passed a final examination in the following subjects—practical astronomy, laying out of curves, theory and practice of levelling, descriptions by metes and bounds, use and adjustment of surveying and levelling instruments, *The Surveys Act, The Mining Act, The Registry Act, The Land Titles Act* and *The Municipal Act* (in so far as the last three mentioned Acts relate to roads, surveys and plans), rules of evidence and drawing of affidavits, taking of field notes and preparing plans, town planning, geology and mineralogy, *The Ditches and Watercourses Act* and *The Municipal Drainage Act*. 1924, c. 44, s. 2, *part*.

Rev. Stat.
cc. 202, 45,
155, 158,
233.

Rev. Stat.
cc. 316,
241.

Attendance
of appren-
tices at
university
or college.

26. Any student attending the University of Toronto as a student in the Faculty of Applied Science and Engineering, or any school, college or university in Canada, the course of study in which is, in the opinion of the board, similar to that in such faculty, and who has passed his first year examinations at such university or college, may be apprenticed to a practising Ontario land surveyor for a period of three years with the privilege of continuing his studies at such university

or college for the regular periods of such college studies during such term of three years, but so that the minimum term of four months in each year must be spent with a practising Ontario land surveyor. 1917, c. 36, s. 3.

27. A person who has attained the age of twenty-one years and has practised as a land surveyor in any of His Majesty's Dominions other than Ontario, and satisfied the board that the qualifications for practising required in such Dominion were similar to those required in Ontario, and produces to the board his diploma or certificate, shall not be required to serve as an apprentice, or shall only be required to serve during such period, not exceeding three years, as the board may deem requisite, after which he shall, on complying with the other requirements of this Act, have the right to undergo the final examination or such parts thereof as the board may deem necessary, and, if found qualified, shall be admitted to practise, if the same privileges are granted in such Dominion to qualified land surveyors of Ontario. R.S.O. 1914, c. 165, s. 27.

Admission
of persons
qualified in
other
British
dominions.

Proviso.

28.—(1) The privilege of a shortened term of apprenticeship shall also be accorded to any graduate of the Royal Military College at Kingston, and to any graduate in Civil Engineering or in Mining Engineering of the University of Toronto, or McGill College at Montreal, or of Queen's University at Kingston, and such person shall not be required to pass the preliminary examination for admission to apprenticeship, but shall only be bound to serve under articles with a practising surveyor, duly filed as required by section 31, during twelve successive months of actual practice, after which, on complying with all other requirements, he may undergo the examination for admission to practise. R.S.O. 1914, c. 165, s. 28 (1); 1917, c. 36, s. 4.

Graduates
of certain
institutions.

(2) Such person at any time during his apprenticeship may, with the permission of the board, attend the University of Toronto as a student in the Faculty of Applied Science and Engineering, or any school, college, or university, the course of study in which is, in the opinion of the board, sufficiently similar to that in such Faculty, for the purpose of taking any course of study which includes any subject required for the examination for admission to practise, but the total period of such apprenticeship, and of such course of study shall not exceed the period of two years from the date of the articles of apprenticeship as above mentioned, and not less than twelve months of the period of two years shall be passed in the actual service of a practising surveyor. R.S.O. 1914, c. 165, s. 28 (2).

Attendance
at certain
schools dur-
ing appren-
ticeship.

29. If a surveyor dies or leaves Ontario, or is suspended or dismissed, or ceases to practise, his apprentice may complete his term of apprenticeship, under an instrument in

Provision
in case
of death,
etc., of
employer.

writing, with any registered surveyor in actual practice. R.S.O. 1914, c. 165, s. 29.

Instruments
of appren-
ticeship
may be
transferred.

30. A surveyor may, with the consent of the apprentice, by an instrument in writing, transfer him to another registered surveyor in actual practice with whom he may serve the remainder of the term of his apprenticeship. R.S.O. 1914, c. 165, s. 30.

Instruments
binding to
service to
be filed, etc.

31.—(1) No instrument under which an applicant for admission to practise claims to have served shall avail to authorize his admission, unless it was transmitted to the secretary-treasurer within two months next after the date thereof, unless the Council for special reasons otherwise permits, nor unless the prescribed fee was paid at the time of transmitting the instrument.

Acknowledg-
ment and
filing.

(2) The secretary-treasurer shall acknowledge by post the receipt of all such instruments transmitted to him and shall keep the same filed in his office. R.S.O. 1914, c. 165, s. 31.

ADMISSION OF CANDIDATES.

Notice
by candi-
dates for
admission.

32. Every person desiring to be examined by the board to be admitted to practise shall give notice thereof in writing to the secretary-treasurer at least one month before the meeting of the board. R.S.O. 1914, c. 165, s. 32.

Certificates
of good con-
duct, etc.

33. Every person applying for admission to practise shall produce to the board satisfactory certificates as to character for probity and sobriety, and before a certificate is granted shall perform such practical operations in the presence of the board, and shall answer such questions on oath, which oath any member of the board may administer, with regard to the actual practice of such applicant in the field, and with regard to his surveying instruments, as the board may require. R.S.O. 1914, c. 165, s. 33.

Certificate
of qualifi-
cation.

34.—(1) If the board is satisfied as to the qualifications of the candidate, and his compliance with all the preliminary requirements of this Act, it shall grant him a certificate (Form 2), and such certificate shall, on the applicant complying with the other requirements of this Act, entitle him to practise as a surveyor.

Registration.

(2) The certificate shall be registered in the office of the Provincial Secretary. R.S.O. 1914, c. 165, s. 34.

Application
for certi-
ficate of
qualification.

(3) A candidate who has so satisfied the board shall, within three months of receiving official notification thereof, apply to the board for such certificate, and on receiving the same shall forthwith apply to the secretary-treasurer to be registered as a member of the Association. 1917, c. 36, s. 5.

35.—(1) Before receiving his certificate the applicant shall enter into a joint and several bond to His Majesty, with two sufficient sureties to the satisfaction of the board, or the chairman or secretary thereof, in the sum of \$1,000, conditioned for the due and faithful performance of the duties of his office. Candidates to give security.

(2) The bond shall be deposited in the office of the Treasurer of Ontario and shall enure to the benefit of any person sustaining damage by breach of the condition thereof. R.S.O. 1914, c. 165, s. 35. Deposit of security.

36.—(1) The applicant, after having been granted a certificate, shall also take and subscribe the oath of allegiance, and the following oath before the board, or a member thereof specially deputed by the board for that purpose:— Oaths of allegiance and office.

“I, A.B., do solemnly swear that I will faithfully discharge the duties of an Ontario Land Surveyor, according to law, without favour, affection or partiality. So help me God.”

(2) The oaths of allegiance and of office shall be deposited in the office of the Provincial Secretary. R.S.O. 1914, c. 165, s. 36. Filing.

SUSPENSION FOR MISCONDUCT.

37.—(1) The Council may suspend or dismiss from the Association any surveyor whom it finds guilty of gross negligence or of corruption in the execution of the duties of his office; but the Council shall not take action until a complaint made under oath has been filed with the secretary-treasurer, and a copy thereof forwarded to the person accused, nor shall the Council suspend or dismiss such surveyor without having previously summoned him to appear in order to be heard in his defence, nor without having heard the evidence offered in support of the complaint and on behalf of the surveyor. Dismissal or suspension of members.

(2) The evidence shall be taken under oath to be administered by the chairman of the Council, or by the person acting as such in his absence, or by the secretary, and shall be taken down by a stenographer as in the case of evidence taken in the Supreme Court. Evidence.

(3) A surveyor so dismissed or suspended may, within fourteen days after service upon him of a copy of the order or resolution of dismissal or suspension, appeal therefrom to a divisional court by giving seven days' notice to the secretary-treasurer, and may require the evidence taken to be filed in the Central Office of the Supreme Court, and the costs of such appeal shall be in the discretion of the Court. Appeal from order of dismissal or suspension.

(4) The Supreme Court or a judge thereof may extend the time for appealing for a further period not exceeding fourteen days. Extension of time for appealing.

Setting down
appeal for
hearing.

(5) The appeal shall be set down to be heard at a sittings of the Court to be held within one month after the time, or the extended time, for appealing has expired.

Consequences
of dismissal.

(6) Unless the order or resolution is set aside, or the Court or the Council otherwise orders, a surveyor so dismissed or suspended shall not have the right to practise as a surveyor until after the appeal has been disposed of except where the time for which he was so suspended has expired.

On conviction
of crime.

(7) The Council may suspend or dismiss from the Association any member who has been convicted of any crime, and cause his name to be removed from the register.

Restoration
of name to
register.

(8) The Council may direct the registrar to restore to the register the name of any person or any entry erased therefrom, either without fee or on payment of such fee, not exceeding the arrears of fees due to the Association as the council may fix. R.S.O. 1914, c. 165, s. 37.

ATTENDANCE OF WITNESSES.

Power to
summon
witnesses.

38. On any enquiry concerning an election or the dismissal, suspension or restoration of any member a summons under the hand of the president, or of the vice-president, or of any two members of the Council, for the attendance of a witness before the Council, shall have all the force of a subpoena; and any witness not attending in obedience thereto shall be liable to attachment in the Supreme Court. R.S.O. 1914, c. 165, s. 38.

FEES.

Tariff of
fees.

39.—(1) The following fees shall be paid to the secretary-treasurer:—

(a) By every person authorized to practise under the provisions of this Act on applying for registration, \$1;

(b) By each member of the Association an annual membership fee of \$7;

(c) By each apprentice on transmitting to the secretary-treasurer the articles of apprenticeship, \$10;

(d) By each candidate for examination, with his notice thereof, \$1;

Examination
fee.

(e) By each candidate for preliminary examination on presenting himself for examination, \$15, for the intermediate examination on presenting himself for such examination, \$20, and for each candidate for the final examination on presenting himself for such examination, \$40;

Fees of
students.

(f) By each candidate for the final examination on presenting himself for such examination \$10, and on obtaining a certificate to practise \$10;

(g) For registering each transfer of articles, \$5;

(h) By each applicant obtaining a certificate to practise, for official notice in the *Ontario Gazette*, \$1.

R.S.O. 1914, c. 165, s. 39; 1914, c. 26, s. 1; 1917, c. 36, s. 6 (c), (d); 1920, c. 49, s. 2; 1924, c. 44, s. 3.

(2) Where the annual fees of any member remain unpaid for more than six years and the Council is unable to grant total exemption for such period on the ground of extenuating circumstances, such member shall be suspended from membership of the Association until such fees are paid in full or in such part as the Council may deem just. 1917, c. 36, s. 6 (e).

40. Every surveyor summoned to attend any civil or criminal court, for the purpose of giving evidence in his professional capacity, or in consequence of any professional service rendered by him, shall be entitled to \$5 for each day he so attends, in addition to his travelling expenses, to be taxed and paid in the manner by law provided with regard to the payment of witnesses attending such court. R.S.O. 1914, c. 165, s. 40.

REGISTRATION OF PERSONS ENTITLED.

41.—(1) The secretary-treasurer shall make and keep a correct register, of all persons entitled to be registered under this Act, and shall enter opposite the name of any registered person who has died a statement of that fact, and shall make necessary alterations in the addresses of persons registered, and subject to this Act shall keep the register in accordance with the by-laws of the Association and the orders and regulations of the Council.

(2) No person who neglects or omits to be so registered shall be entitled to any of the rights or privileges conferred by registration so long as such neglect or omission continues.

(3) A registered surveyor desiring to give up practice may have his name removed from the register upon giving written notice to the secretary-treasurer of such desire, and paying all fees due from him to the Association, and thereafter he shall not be liable to the Association for any annual or other fees, and may, upon like notice of his intention to resume practice and paying the annual fee for the year in which such notice is given, be again registered.

(4) No name shall be entered in the register except of persons authorized by this Act to be registered, nor unless the secretary-treasurer is satisfied by proper evidence that the person claiming to be entitled to be registered is so entitled, and any appeal from his decision shall be decided by the Council, and any entry which is proved to the satisfaction of the Council to have been fraudulently or incorrectly made shall be erased from or amended in the register by order of the Council.

Exemption from fees after long period of membership.

(5) The Association may by by-law provide that any surveyor who has been in the actual practice of his profession for a period of thirty-five years or more, and has during the entire period been a duly qualified surveyor, may be exempted from payment of the annual membership fee. R.S.O. 1914, c. 165, s. 41.

Omission to register through absence, etc.

42. Any person who was duly authorized to practise as a surveyor of land in Ontario on the 14th day of April, 1892, who, through absence, illness or inadvertence, has omitted to become a member of the Association, may be admitted by the Council to enrolment as a surveyor upon payment of the arrears of fees or such part thereof as the Council may direct. R.S.O. 1914, c. 165, s. 42.

Restriction of right to use title.

43.—(1) Unless registered no person shall be entitled to take or use the name or title of "Ontario Land Surveyor," either alone or in combination with any other word or words, or any name, title or description implying that he is registered under this Act.

Penalty.

(2) Any person who contravenes this section shall incur a penalty not exceeding \$20 for the first offence, and not exceeding \$50 for each subsequent offence. R.S.O. 1914, c. 165, s. 43.

Register of practising surveyors.

44.—(1) The secretary-treasurer shall in every year cause to be printed, published and kept for inspection at his office, free of charge, a register, in which shall be printed the names in alphabetical order, according to the surnames, with the respective residences, of all person appearing on the general register on the 1st day of January in such year.

Evidence of registration.

(2) A copy of such register, purporting to be so printed and published, shall be evidence in all Courts and before all justices of the peace and others that the persons therein mentioned are registered according to the provisions of this Act.

Certified copy of entry.

(3) In the case of any person whose name does not appear in such copy a certified copy under the hand of the secretary-treasurer of the entry of the name of such person in the register shall be like evidence that such person is registered under the provisions of this Act. R.S.O. 1914, c. 165, s. 44.

FRAUDULENT REGISTRATION.

Penalty for making improper entries.

45. If the secretary-treasurer wilfully makes or causes or allows to be made any falsification in any matter relating to the register he shall incur a penalty of not less than \$20 and not more than \$50. R.S.O. 1914, c. 165, s. 45.

Penalty for procuring entry by fraud.

46. Any person who wilfully procures or attempts to procure registration under this Act by making or producing or causing to be made or produced any false or fraudulent representation or declaration, either verbally or in writing, shall

incur a penalty of not less than \$20 and not more than \$50, and the Council may remove the name of the offender from the register. R.S.O. 1914, c. 165, s. 46.

RECOVERY OF FEES AND PENALTIES.

47.—(1) All fees payable under this Act may be recovered as ordinary debts due the Association and all penalties imposed by or under the authority of this Act shall be recoverable under *The Summary Convictions Act*. Recovery of fees and penalties. Rev. Stat. c. 121.

(2) All penalties recovered under this Act shall immediately upon the recovery thereof be paid over by the convicting justice to the secretary-treasurer. Application of penalties.

(3) Any person may be prosecutor or complainant under this Act, and the Council may allot such portion of the penalty as it deems expedient to the prosecutor. R.S.O. 1914, c. 165, s. 47. Who may be complainant.

NOTICES AND DOCUMENTS.

48.—(1) Except as herein otherwise provided all notices and documents required by or for the purposes of this Act to be sent by mail, if sent by registered post, shall be deemed to have been received at the time when the same would be delivered in the ordinary course of mail. Service of notices.

(2) Such notices and documents, when sent to a person registered under this Act, shall be deemed to be properly addressed if addressed to him according to his address in the register of the Association. R.S.O. 1914, c. 165, s. 48. What to be deemed proper address.

HOW FUNDS TO BE APPLIED.

49.—(1) All money arising from fees payable on registration or from the annual fees, or from the sale of copies of the register or otherwise shall be applied for defraying the expenses of the Association in accordance with such regulations as may be made by the Council. Application of funds.

(2) The Council may invest, in the name of the Association, any money not so expended in such securities as trustees may properly invest in, and the income derived therefrom shall form part of the ordinary income of the Association. R.S.O. 1914, c. 165, s. 49. Investment.

50. The secretary-treasurer shall enter in books to be kept for that purpose a true account of all moneys by him received and paid, and such books shall be audited and submitted to the Council and to the Association when and so often as they may require. R.S.O. 1914, c. 165, s. 50. Accounts of Association.

FORM 1.

VOTING PAPER.

(Section 10.)

Association of Ontario Land Surveyors.

Election 19 .

I,

of

in

a member of the Association of Ontario Land surveyors, do hereby declare that

(1) The signature hereto is in my proper handwriting.

(2) I vote for A. B., of , as (president, vice- president, secretary-treasurer, auditor or auditors, as the case may be).

(3) I vote for the following persons as members of the council of the Association:—A. B., of and C. D., of

(4) I have signed no other voting paper at this election.

(5) This voting paper was signed on the day of the date thereof.

Witness my hand this day of , 19 .

R.S.O. 1914, c. 165, Form 1.

FORM 2.

(Section 34.)

CERTIFICATE OF ADMISSION.

This is to certify that A. B. of has duly passed his examination before the board of examiners, and has been found qualified to fill the office and perform the duties of an Ontario Land Surveyor, he having complied with all the requirements of the law in that behalf. Wherefore the said A. B. is admitted to the said office and is by law authorized to practise as an Ontario Land Surveyor.

In witness whereof we have signed this certificate at the City of Toronto the day of , 19 .

C. D., Chairman.
E. F., Secretary.

R.S.O. 1914, c. 165, Form 2.

CHAPTER 202.

The Surveys Act.

1. No survey of land for the purpose of establishing, defining, locating or describing any limit, boundary or angle whatsoever in any township, city, town, village, concession, section, block, gore, reserve, common, lot, mining claim, mining location or other parcel of land shall be valid unless performed by an Ontario land surveyor. 1920, c. 48, s. 2.

2. In this Act,

- (a) "Department" shall mean Department of Lands and Forests; Validity of surveys.
- (b) "Minister" shall mean Minister of Lands and Forests; Interpretation.
- (c) "Surveyor" shall mean Ontario land surveyor; "Department."
- (d) "Regular Lot" shall mean a lot the boundaries of which conform to that particular system of survey in which such lot occurs; "Minister."
- (e) "Unbroken Lot" shall mean a regular lot the area of which is not diminished or increased by any natural or physical features shown on the original plan. "Surveyor."
- (f) "Undisputed Angle" shall mean an angle of a lot at which an original post, original monument or other original mark intended to define such angle still exists or at which the position of the original post, original monument, or original mark can be established by satisfactory evidence. "Regular lot."
- (g) The true bearing of a line shall be the astronomic bearing of the same. 1920, c. 48, s. 3. "Unbroken lot."

3. All boundary or division lines legally established, and ascertained under the authority of any ordinance or Acts heretofore in force shall remain good and valid and all other acts or things legally done and performed under the authority of such ordinances or Acts, or any of them, and in conformity to the provisions thereof, shall remain good and valid notwithstanding the repeal of any such ordinance or Act. 1920, c. 48, s. 4.

True bearing of line.

Boundary lines heretofore established confirmed.

PROCEDURE OF SURVEYOR.

Field
notes.

4. Every surveyor shall make and preserve exact and regular field notes of all his surveys and shall also keep a proper record or index of all such field notes and shall exhibit or give copies of the same to any person concerned for a reasonable charge. 1920, c. 48, s. 5.

Standard
measure.

5.—(1) The secretary-treasurer of the Association of Ontario Land Surveyors shall, by the standard measure of length deposited with the Department and under such instructions as he from time to time receives from the council of the Association, examine, test and stamp each standard measure of length for the surveyor who brings the same for examination; and for each standard measure so examined, tested and stamped, shall receive a sum, not less than \$1 nor more than \$2 as the council may by by-law determine.

Surveyor
to procure
a stamped
standard
measure of
length.

(2) Every admitted and practising surveyor shall procure and shall cause to be examined, corrected, tested and stamped or otherwise certified by the secretary-treasurer a standard measure of length, under the penalty of the forfeiture of his license or certificate, and shall as often as may be necessary verify by such standard measure the length of his measuring tapes and chains, and shall also verify in the proper manner the accuracy of his other surveying instruments. 1920, c. 48, s. 6.

Chainman's
oath.

6. A surveyor may require any chainman or other assistant in his employ, before he commences his duties as such, to take an oath to act as such justly and exactly according to the best of his judgment and ability and to render a true account of such duties to the surveyor by whom he is employed, which oath such surveyor employing is hereby authorized and required to administer whenever the same may be necessary. 1920, c. 48, s. 7.

When land
surveyors
may pass
over private
lands

7.—(1) A surveyor and his duly authorized assistants when engaged in the performance of the duties of his profession, may pass over, measure along and ascertain the bearing of any line or limit whatsoever and for such purposes may pass over the lands of any person whomsoever, doing no actual damage to the property of such person.

Right to enter
buildings.

(2) For the purpose of obtaining any measurements necessary to a proper and satisfactory performance of the duties of his profession, a surveyor and his duly authorized assistants shall have the right of entry to any building at a time suitable to the rightful occupant of such building.

Penalty
for obstruc-
tion

(3) Any person who interferes with or obstructs a surveyor in the exercise of any of the powers conferred by subsections 1 and 2 shall incur a penalty not exceeding \$100

recoverable under *The Summary Convictions Act*. 1920, c. 48, Rev. Stat., c. 121.
s. 8.

8.—(1) For better ascertaining the original limits of Administration of oaths by surveyor.
any township, concession, range, lot, mining claim, mining location or other parcel of land, every surveyor may when necessary administer an oath to any person whom he examines concerning any boundary, post or monument or any original land mark, line limit or angle of any township, concession, range, lot, mining claim, mining location or other parcel of land which such surveyor is employed to survey.

(2) The evidence taken by the surveyor shall be reduced Evidence, how to be taken down.
to writing and shall be read over to and be signed by the person giving the same, or, if he cannot write, such person shall acknowledge it as correct before two witnesses, who, as well as the surveyor, shall sign the same.

(3) The evidence, and any document or plans prepared Filing evidence documents.
and sworn to by a surveyor as correct with reference to any survey by him performed, may be filed and kept in the registry office of the registry division, or in the office of land titles for the district in which the land to which the same relates is situated, subject to be produced thereafter in evidence in any court.

(4) The fee for receiving and filing the same shall be Fees.
twenty-five cents; and the expense of filing shall be borne by the parties in the same manner as the other expenses of the survey. 1920, c. 48, s. 9.

9.—(1) Where a surveyor is in doubt as to the true Powers to secure evidence by subpœna.
boundary or limit of any township, city, town, village, concession, section, block, gore, reserve, common, lot, mining claim, mining location or parcel or tract of land which he is employed to survey and has reason to believe that any person is possessed of any important information touching such boundary or limit, or of any writing, plan or document tending to establish the true position of such boundary or limit, then if such person being tendered his reasonable expenses does not willingly appear before and be examined by such surveyor, or does not willingly produce to him such writing, plan or document, a judge of a county or district court, upon the application of such surveyor or the person employing him, accompanied by an affidavit or solemn declaration of the facts on which the application is founded, may order a subpœna to issue commanding such person to appear before the surveyor at a time and place to be mentioned in the subpœna and to bring with him any writing plan or document mentioned or referred to therein.

(2) The subpœna shall be served on the person named Service of subpœna.
therein by delivering a copy thereof to him, or by leaving the same for him with some grown-up person at his resi-

dence, exhibiting to him or to such grown-up person the original.

Penalty
for dis-
obeying.

(3) If the person commanded to appear by the subpœna after being paid his reasonable expenses, or having the same tendered to him, refuses or neglects to appear before the surveyor, at the time and place appointed in the subpœna, or to produce such writing, plan or document, if any, therein mentioned or referred to, or to give such evidence or information as he may possess touching the boundary or limit in question, the person so summoned shall be guilty of a contempt of the court out of which the subpœna issued, and an attachment may be issued against him by order of the court, and he may be punished accordingly, by fine or imprisonment, or both, in the discretion of the court. 1920, c. 48, s. 10.

True and
unalterable
boundaries,
what to be
deemed.

10.—(1) All boundary lines of townships, cities, towns, and villages, all concession lines, governing points, and all boundary lines of concessions, sections, blocks, gores, reserves, mining claims, mining locations and commons, and all side lines and limits of lots surveyed and all trees marked in lieu of posts and all posts or monuments, marked, placed, or planted at the front or rear angles of any lots or parcels of land, under the authority of the Executive Government of the late Province of Quebec or of Upper Canada, or of Canada, or under the authority of the Executive Government of Ontario, or the Minister, shall be the true and unalterable boundaries of all and every such townships, cities, towns, villages, concessions, sections, blocks, gores, reserves, mining claims, mining locations, commons and lots or parcels of land respectively, whether the same upon admeasurement be found to contain the exact width or depth or more or less than the exact width or depth shown on the original plan and field notes or mentioned or expressed in any letters patent, grant or other instrument in respect of such township, city, town, village, concession, section, block, gore, reserve, mining claim, mining location, common, lot or parcel of land.

Original
posts and
monuments.

Road allow-
ances and
commons dedi-
cated.

(2) In every township, city, town or village, concession, section, block, gore, reserve, mining claim, mining location, common, lot or parcel of land or any part thereof which has been surveyed under the authority mentioned in this section, all allowances for any road, street, lane or common, laid out in the original survey of such city, township, town or village, concession, section, block, gore, reserve, mining claim, mining location, common, lot or parcel of land, or any part thereof, shall be public highways and commons; and all posts or monuments placed or planted in the original survey to designate or define any such allowance for road, street, lane or common, shall designate or define the true and unalterable boundaries of every such road, street, lane or common.

Monuments
on original
survey to
govern.

(3) Every surveyor employed to make a survey in any such township, city, town, village, concession, section, block, gore, reserve, mining claim, mining location, common, lot or parcel of land surveyed originally under the authority referred to in this section, shall be governed by the provisions set out in this Act for a survey in a township. 1920, c. 48, s. 11.

Rules for
survey in
township
to govern.

11. Where a township, tract or block of land, the whole or any part of which has not been surveyed, has been or is granted by the Crown, the first survey made under the authority of the owner of any unsurveyed part thereof shall have the same force and effect as if made under the authority mentioned in section 10 and all allowances for roads, streets, lanes and commons surveyed in such township, tract or block of land and laid down on the plans of such survey thereof, shall be public highways, roads, streets, lanes and commons, and all lines run and marked in such survey, and all posts or monuments planted or placed in such survey to define any allowance for road, street, lane or common, concession, section, block, gore, parcel or lot of land, shall define the true and unalterable lines and boundaries of such allowances for road, street, lane or concession, section, block, gore, common, parcel, or lot of land; and every surveyor employed to make a survey in such township, tract or block of land, shall be governed by the provisions laid down in this Act for surveys in townships surveyed under the authority referred to in the next preceding section. 1920, c. 48, s. 12.

Unsurveyed
lands
granted in
blocks and
subsequently
surveyed by
grantees.

12.—(1) Where any city, town, village, lot, mining claim, mining location or part thereof, or any parcel or tract of land has been or may be surveyed and laid out and a plan thereof made by a company or individual in accordance with the provisions of *The Registry Act* or *The Land Titles Act*, all lines or limits shown thereon and the courses thereof, given in such survey and laid down on the plans thereof and all posts or monuments placed or planted in the first survey of such city, town, village, or part thereof, or parcel or tract of land, to designate or define any allowances for road, street or lane, or any commons, lot, block or parcel of land, shall designate and define the true and unalterable lines and boundaries thereof respectively.

Re surveys
of surveyed
territory
under Rev.
Stat. c.
155, 158.

(2) Subject to the provisions of *The Registry Act* and *The Land Titles Act*, as to the amendment or alteration of plans, all allowances for roads, streets, lanes or commons, surveyed in any such city, town, village, lot, mining claim, mining location or any parcel or tract of land or any part thereof, which has been or may be surveyed and laid out by companies or individuals and laid down on the plans thereof shall be public highways, streets, lanes and commons.

Allowances
for roads
laid out by
private
owners.

Rev. Stat.
cc. 155, 158.

(3) Where a surveyor is employed to establish or re-establish the boundaries of any road, street, lane, common, lot,

Methods of
original
survey to
be followed.

block or parcel of land shown on any such plan, he shall follow the method adopted in making the original survey as shown on the plan or field notes and shall give proportionate dimensions to each lot shown thereon where the original stakes defining the angles of such lot cannot be found or their position satisfactorily established.

Allowance
for road
when closed
to belong
to adjoining
owner.

Rev. Stat.
cc. 155, 158.

(4) Where under subsection 2 an allowance for a road, street or lane laid down upon a plan is a public highway but the municipal corporation has not assumed it for public use, and the allowance or any part thereof is closed by an alteration of the plan under *The Registry Act*, *The Land Titles Act* or other provisions in that behalf, the allowance, or part thereof so closed shall belong to the owners of the land abutting thereon.

How owners
of abutting
lands to take.

(5) Where several parcels of land having different owners abut on the allowance or part thereof, so closed, the owner of each parcel shall be entitled to that part of the allowance so closed on which his land abuts to the middle line of the allowance, and where there are several owners of an abutting parcel, each shall be entitled to the like estate or interest in such part as he has in the parcel of land abutting thereon.

When
allowance
abutted on
one side by
a stream,
etc.

(6) When any part of the allowance so closed is abutted on one side by another road, street or lane or by a stream, river or other body of water over which the public have rights of navigation or of floating timber, the whole width of such part shall belong to the owners whose lands abut thereon opposite such street, stream, river or water.

Division
line between
adjoining
parcels.

(7) The division line between two adjoining parcels produced to the middle line of the closed allowance or across such allowance in cases coming within subsection 6 shall be the division line between the parts of the closed allowance to which the owners of such parcels are respectively entitled.

Incumbrance
to extend to
road so closed

(8) When there is an incumbrance on a parcel of land abutting on the allowance or part thereof so closed, it shall extend through and include the part thereof to which the owner of such parcel becomes entitled under this section. 1920, c. 48, s. 13.

Where
allowance
closed,—
deed to
adjoining
owner.

(9) Where any allowance for a road, street or lane is closed under the provisions of this section, it shall be the duty of the corporation of the municipality in which the allowance for such road, street or lane was vested to execute a conveyance to each owner of that portion of the road allowance which belongs to him under this section, and the corporation shall register such conveyance in the proper registry or land titles office.

(a) The cost of preparing and registering the conveyance shall be borne by the municipal corporation. 1927, c. 54, s. 2.

13.—(1) Every angle of the exterior boundary of a sub-division plan of an original township lot, mining location, mining claim or part thereof prepared, for the purpose of registration in accordance with the provisions of *The Registry Act*, or *The Land Titles Act* shall be defined in the survey thereof by a monument, such monument to be composed of,

Monuments
on subdivision
plans.

Rev. Stat.
c. 155, 158.

- (a) Stone or reinforced concrete 5 inches square at the top, 8 inches square at the base and not less than 4 feet in length, to be planted at least 3 feet 6 inches below the surface;
- (b) Iron bar 1 inch square, 4 feet long to be driven at least 3 feet 6 inches below the surface;
- (c) In the case of solid rock, 1 inch iron bolt, 6 inches long, cemented or leaded into the rock to a depth of 4 inches.

Material of
monuments.

(2) All bearings shown on the plan of any such survey shall be referred to one course in the boundary thereof, such course being designated on the plan as the reference line, and the course of such reference line shall be the true bearing which shall be determined by astronomic observation or other satisfactory method.

Bearings of
subdivision
plans.

(3) One such monument shall be placed at one angle of each street intersection shown on any plan prepared for the purpose of registration.

(4) The surveyor shall indicate on such plan the position and form of any such monuments planted in accordance with this section, and shall certify that the plan is prepared in accordance with the provisions of *The Surveys Act*, 1920, c. 48, s. 14.

Certificate
on subdivi-
sion plan.

Rev. Stat.
c. 202.

MUNICIPAL SURVEYS.

14. Where the council of a county deems it advisable that monuments of stone or other durable material shall be placed on the boundary or boundaries of any township or townships situate therein such council may apply to the Lieutenant-Governor in Council to cause a survey to be made and such monuments placed under the direction and order of the Minister and such council shall cause the sum requisite to defray the expenses to be incurred, or the proportion thereof payable by the ratepayers of any township or concession, to be levied on them, in the same manner as any sum required for any other local purposes authorized by by-law may be levied. 1920, c. 48, s. 15.

Municipal
survey of
township
boundary.

15.—(1) Whereas in several townships, some of the concession road lines and side road lines or parts of the concession road lines and side road lines were not run in the original survey and the survey of some of the concession road

Municipal
survey of
side road
or conces-
sion lines.

lines and side road lines or parts of the concession road lines and side road lines have been obliterated, and owing to the want of such lines the inhabitants of such concessions are subject to serious inconvenience, therefore the municipal council of the township in which such lines are situated shall, on application of one-half the land owners affected thereby, or may upon its own motion without such application, apply to the Lieutenant-Governor in Council to cause any such line to be surveyed and to be marked by monuments of stone or other durable materials under the direction and order of the Minister, in the manner prescribed in this Act, at the cost of such owners. 1920, c. 48, s. 16 (1); 1927, c. 54, s. 3.

Expenses,
how borne.

(2) The township council shall cause to be laid before it an estimate of the sum requisite to defray the expenses to be incurred in order that the same may be levied on the owners affected thereby in proportion to the benefit received, in the same manner as any sum required for any other purpose authorized by law may be levied, or such council may without a previous estimate levy on such owners in such proportions the amount of the expense when the same shall have been incurred and ascertained and the certificate of the Minister certifying the amount of such expense shall be conclusive.

Payment
out of
municipal
funds.

(3) Where an application is made by a township council upon its own motion, such council if it deems the application to be in the public interest in assisting to determine the boundaries or limits of any public road or highway or the like may pay out of the general funds of the township either the whole of the expense or such part thereof as the council may deem proper and in the event of the council paying only part of the expense out of the general funds, the council may order that the remainder of the expense be levied on such owners in proportion to the benefit received. 1920, c. 48, s. 16 (2, 3).

Municipal
survey of
lot lines.

16.—(1) Upon receipt by the municipal council of any township, city, town or village of an application from at least one-half the owners of the lands described in the application for a municipal survey of such land, the council shall, or upon its own motion may apply to the Lieutenant-Governor in Council, in the same manner as is provided by the next preceding section, to cause a survey to be made and stone or other durable monuments to be placed at the front or at the rear, or at front and rear angles of any lot or lots in any such township, city, town, village, concession, section, block, gore, lot, mining claim, mining location, common, or parcel of land referred to in sections 10, 11 and 12 of this Act, such council shall apply to the Lieutenant-Governor in Council in the same manner as is provided by the next preceding section to cause a survey to be made and such monuments to be placed under the authority of the Minister. 1924, c. 45, s. 2.

(2) The cost of such survey shall be defrayed in the manner prescribed by the next preceding section. 1920, c. 48, s. 17 (2). Cost of survey, how to be defrayed.

17.—(1) The Minister shall appoint a surveyor to make any such survey for which application has been made to the Lieutenant-Governor in Council as provided in the next three preceding sections and on the return in triplicate of the plans and field notes of such survey to the Minister, he shall cause a notice thereof to be published once in each week for four consecutive weeks in a newspaper published in the county or district town of the county or district in which the lands lie, and shall specify in the notice a day not less than ten days after the last publication on which the report of the survey will be considered and the parties affected thereby heard and on the hearing the Minister may either confirm the survey or direct such amendments or corrections to be made as he shall deem necessary, and shall confirm the survey so amended or corrected, and the lines or parts of the lines so surveyed and marked and the monuments so planted shall thereafter define and designate such corners, governing points or offsets or such ends of concessions or side road lines or such concession or side roads or parts of concession or side roads or such front or rear angles of lots, to all intents and purposes and the order of the Minister confirming the survey shall be final and conclusive upon all persons and shall not be questioned in any court, and the plan and field notes shall have the same force and effect as an original plan and field notes. 1920, c. 48, s. 18 (1); 1927, c. 54, s. 4. Confirmation of survey.

(2) One copy of such plan and field notes of any such survey so confirmed shall be filed by the Minister in the registry office or office of land titles for the district in which the land is situate. 1920, c. 48, s. 18 (2). Filing copy of plan and field notes in registry and land titles offices.

(3) If in the course of a survey undertaken under sections 14, 15 or 16 of this Act it is found necessary to establish any lines, limits or boundaries other than those specifically mentioned in the instructions, the Minister may at his discretion confirm any such line, limit or boundary as part of the survey and require the same to be properly marked with stone or other durable monuments. 1924, c. 45, s. 3. Special lines and boundaries.

18. All expenses incurred in making any survey and placing any monument under the provisions of sections 14, 15, 16 and 17, shall be paid by the treasurer of the municipality which made the application for the survey to the surveyor making the survey, on the certificate and order of the Minister. 1920, c. 48, s. 19. Municipal treasurer to pay in first instance.

RE-SURVEYS OF SURVEYED TERRITORY.

Determina-
tion of lost
or obliterated lot
angles.

19.—(1) Where a surveyor is required to establish for any purpose a front angle of any lot in any concession and the original post or monument marking the same cannot be found, he shall obtain the best evidence that the nature of the case admits of respecting the position of such post or monument, but if the same cannot be satisfactorily established, then the surveyor shall measure the true distance between the two nearest undisputed angles of lots on the concession line, one being on either side of the angle which it is required to establish and shall establish such angle by dividing such distance proportionately as intended in the original survey.

Determina-
tion of
obliterated
concession
lines.

(2) Where that part of the concession line on which such angle is situated has become obliterated, the same shall be established by drawing a straight line between the two nearest places where the same can be ascertained or determined, one being on either side of the angle which it is required to establish.

Obliterated
township
boundary.

(3) Where a surveyor is required to establish for any purpose a front angle of any lot on a township boundary and the original post or monument marking the same cannot be found, he shall obtain the best evidence that the nature of the case admits of respecting the position of such post or monument, but if the same cannot be satisfactorily established, then the surveyor shall measure the true distance between the two nearest undisputed angles of lots on the township boundary, one being on either side of the angle which it is required to establish and shall establish such angle by dividing such distance proportionately as intended in the original survey.

Best evidence
in double
front conces-
sions.

(4) Where that part of the township boundary on which such angle is situated has become obliterated, the same shall be established by drawing a straight line between the two nearest places where the same can be ascertained or determined, one being on either side of the angle which it is required to establish.

Where some
posts or marks
are lost.

(5) In the original survey of any township, where more than one row of posts, monuments or marks was planted or made on the concession line, and a post, monument or mark marking the angle of a lot is lost and the position thereof cannot be satisfactorily ascertained, any such post, monument or mark found still standing or the position of which can be satisfactorily determined on the opposite side of the concession road allowance, shall constitute the best evidence as to the position of the post, monument or mark which is lost, and if no such post, monument or mark can be found or so ascertained on the opposite side of the concession road allowance and the position of a post, monument or mark on

the centre line of the concession line can be so determined, then such post, monument or mark on the centre line shall be the best evidence for the purpose of establishing the post which is lost.

(6) Provided that subsections 1 and 3 in this section shall ^{Proviso.} not apply to the front angles of lots directly or indirectly affected by the provisions of section 29.

(7) Provided also that angles of lots that can be estab- ^{Proviso.} lished in accordance with the provisions of section 29 of this Act, and subsections 3 and 4 of this section shall be undisputed angles for the purpose of subsection 1 of this section.

(8) Where a surveyor is called upon to establish as a ^{Whole} whole or in part a concession line that has been completely ^{concession} obliterated or was not run in the original survey, he shall ^{line oblit-} establish the same so as to give the lots in each of the adja- ^{erated or} cent concessions a depth proportionate to that intended in ^{not run.} the original survey. 1920, c. 48, s. 20.

20.—(1) Except as provided in subsections 2 and 3 of ^{Governing} this section, the division or side lines between lots in any ^{lines.} concession in any township other than those townships surveyed into sections under the authority of an Order in Council dated 27th day of March, 1829, and subsequent orders, shall be run,

(a) if so intended on the same astronomic course as the boundary line of the concession at that end from which the lots are numbered, and if not so intended, or such boundary was not run in the original survey, or is wholly broken by a lake, river or other natural boundary, then on the same astronomic course as the boundary line at the other end of the concession if so intended;

(b) if not intended to be run on the same course as the boundary line at either end of the concession, such division or side lines shall be run, if so intended, at such angle with the boundary line at that end of the concession from which the lots are numbered as shown on the plan and field notes of record in the Department, and if not so intended or if such end be wholly bounded by a lake, river or other natural boundary, or was not run in the original survey, then at such angle with the boundary line at the other end of the concession as is shown on such plan and field notes if so intended;

(c) if neither of such boundaries of the concession were run in the original survey or if the concession is wholly bounded at both ends by a lake, river or other natural boundary then such division or

side lines shall be run at such angle with the course of the line in front of the concession as is stated in such plan and field notes or if parts of the line in front of the concession have been run on different courses as shown on such plan and field notes, then at such angles with the course of each of those parts, as is stated in the plan and field notes.

Where division or proof line has been run between lots.

(2) If any division or side line between lots, or proof line intended to be on the same course as the division or side lines between lots, was drawn in the original survey in any concession in any such township bounded at both ends by a lake, river or other natural boundary, or in which the line at neither end of the concession was run in the original survey, the division or side lines between the lots therein shall be run on the same course as such division or side or proof line.

When more than one such line drawn in original survey.

(3) When two or more such division or side lines or proof lines were drawn in the original survey of such concession, so bounded, that division or side line or proof line which is nearest to the boundary of the concession from which the lots are numbered shall govern the course of the division or side lines of all the lots in such concession between the boundary of the concession from which the lots are numbered, and the next division or side line or proof line drawn in the original survey; and such last-mentioned line or proof line shall govern the course of the division or side lines of all the lots up to the next division or side line or proof line drawn in the original survey or to the boundary of the concession towards which the lots are numbered as the case may be.

When proof line to govern.

(4) If in any concession in any such township coming within the provisions of paragraphs *a* and *b* of subsection 1 of this section, such division or side line or proof line was run in the original survey, it shall govern the course of the division or side lines in such concession on that side of such proof line which is farthest from that end of the concession which is intended to govern the course of the division or side lines in such concession. 1920, c. 48, s. 21.

How lines to be governed in townships laid out in sections.

21.—(1) Except as provided in subsection 2, in all those townships which in the original survey were divided into sections, agreeably to an Order in Council bearing date the 27th day of March, 1829, or subsequent Orders the division or side lines between the lots in all concessions, in any section or block, shall be governed by the boundary lines of such section or block, in like manner as the division or side lines in townships originally surveyed before that day are governed by the boundary lines of the concession in which the lots are situated. Provided that in those sections or blocks the governing boundaries of which are broken by lakes or rivers in such a way that the course thereof cannot accurately be determined on the ground a surveyor when called

Proviso.

upon to run any side line in a concession in such section or block, shall run such side line on the astronomic course of such side line as shown on the original plan and field notes thereof, of record in the Department.

(2) The side lines between all lots in all townships in the Districts of Muskoka and Parry Sound; all townships in the District of Nipissing which lie south of the Mattawan River and Trout Lake; and the Township of Mattawan in that District; all townships in the provisional County of Hali-burton; the Townships of Dalton, Digby and Longford, in the County of Victoria; the Townships of Galway, Caven-dish, Anstruther and Chandos in the County of Peter-borough; the Townships of Tudor, Grimsthorp, Wollaston, Limerick, Cashel, Faraday, Dungannon, Mayo, Herschell, Monteagle, Carlow, McClure, Wicklow and Bangor, in the County of Hastings; the Townships of Anglesea, Effingham, Abinger and Denbigh, in the County of Lennox and Adding-ton; the Townships of Barrie, South Canonto and North Canonto, in the County of Frontenac, and the Townships of Brougham, Grattan, Wilberforce, Alice, Mattawachan, Grif-fith, Sebastopol, South Algona, North Algona, Fraser, Rich-ards, Hagarty, Brudenell, Lyndoch, Raglan, Radcliffe, Sher-wood, Burns and Jones, in the County of Renfrew shall be run on the astronomic course stated in the plan and field notes of the original survey of record in the Department, but nothing in this subsection shall affect the side lines of any lot in any concession in any section or block in which any side line was run before the 1st day of July, 1897. Exceptions.

(3) Every surveyor shall on the 31st day of December in each year, make to the clerk of the township a return, Form 1, of all lines run by him in such township under the pro- vision of subsection 2 of this section. 1920, c. 48, s. 22. Surveyor's return to township clerk.

22. Where a surveyor is called upon to determine the astronomic course of any governing line for the purpose of running any side line or other division line in any concession or section, he shall determine the astronomic course of the straight line joining the front and rear ends of such govern- ing line, and shall run such side or other line on such astro- nomic course or at an angle therewith, in accordance with the provisions laid down in this Act in that behalf, and where a division or side line is to be run, at an angle with the front line or any part of the front line of any concession, the ends of such front line or part thereof shall be joined as above provided, for the purpose of laying of such angle. 1920, c. 48, s. 23. Governing line, how to determine the course of.

23. The front of each concession in any township where only a single row of posts has been planted on the concession lines, and the lands have been described in whole lots, shall be that boundary of the concession which is nearest to the boundary of the township from which the concessions thereof What shall be deemed the front of a concession where only a single row of posts planted.

If concession
line not run.

are numbered; and where the line in front of any such concession was not run in the original survey, the division or side lines of the lots in such concession shall be run from the angles of lots on the front line of the concession in the rear thereof to the depth of the concession—that is to the centre of the space contained between the lines in front of the adjacent concessions, if the concessions were intended in the original survey to be of an equal depth, or, if they were not so intended, then to the proportionate depth intended in the original survey as shown on the plan and field notes thereof of record in the Department, having due regard to any allowance for a road made in the original survey; and a straight line joining the extremities of the division or side lines of any lot in such concession so drawn shall be the true boundary of that end of the lot which was not run in the original survey. 1920, c. 48, s. 24.

Broken front
concessions.

24.—(1) In those townships in which any concession is wholly bounded in front by a river or lake or other natural boundary where no posts or other boundary marks were planted or made in the original survey on the bank of such river, or lake or natural boundary to regulate the widths in front of the lots in the broken front concessions, the division or side lines of the lots in such broken front concessions shall be drawn from the angles of lots on the concession line in rear thereof to the river, lake or natural boundary in front.

Side lines in
broken fronts.

(2) Where any concession is bounded in front at either end, in part, though not wholly, by a river, lake or other natural boundary, and no posts or other boundary marks were planted or made in the original survey on the bank of such river, lake or natural boundary to regulate the widths of the lots broken thereby, the division or side lines of such broken lots shall be drawn to the lake, river or other natural boundary in front from points on the rear of the concession determined by dividing proportionately as intended in the original survey the distance between the end of the concession and the intersection of the last whole lot line of the original survey with the rear of the concession. Provided that where such end of the concession is wholly bounded by a lake, river or other natural boundary and no measurement was made in the original survey along the rear of the concession to the lake, river or other natural boundary, the surveyor shall determine the points from which the side lines of such lots shall be drawn by measuring along the rear line the widths of the lots as originally intended from the intersection of the last whole lot line.

(3) Similarly where a concession is bounded partly in front by a lake, river or natural boundary and where such lake river or other natural boundary does not extend to either end of the concession, the points from which the lot lines in that part of the concession so bounded shall be run, shall

be determined by dividing proportionately as shown on the original plan and field notes the distance between the intersections of the last whole lot line on either side of such lake, river, or other natural boundary with the rear line of the concession. 1920, c. 48, s. 25.

25.—(1) In those townships in which the concessions have been surveyed with double fronts—that is, with posts or monuments placed or planted on both sides of the allowances for road between the concessions, and the lands have been described in half lots, the division or side lines between such half lots shall be drawn from the angles of lots at both ends of the lot lines to the centre of the concession, and each end of such lot shall be the front of its respective half of such lot and a straight line joining the extremities of the division or side lines of any half lot in such concession, so drawn, shall be the true boundary of that end of the half lot which was not run in the original survey. Concessions with double fronts.

(2) Where a double front concession is not of the full depth, the division or side lines shall be drawn from the angles of lots at both ends thereof, to the centre of the concession as provided in subsection 1, without reference to the manner in which the lot or parts of lots in such concession were described for patent. 1920, c. 48, s. 26.

26. In those townships in which each alternate concession line only has been run in the original survey, but with double fronts, the division or side lines shall be drawn from the angles of lots on each side of such alternate concession lines to the depth of a concession—that is, to the centre of the space contained between such alternate concession lines, if the concessions were intended in the original survey to be of an equal depth—or if they were not so intended, then to a depth proportionate with that intended in the original survey, as shown on the plan and field notes thereof of record in the Department; and each alternate concession line shall be the front of each of the two concessions abutting thereon. 1920, c. 48, s. 27. Alternate concessions.

27. Where the front of any concession or half concession in any township surveyed with double fronts is wholly or in part broken by a lake, river, or other natural boundary, the rear boundary of the adjacent concession or half concession or part of the concession or half concession shall be established by giving to such adjacent concession or half concession or part of concession or half concession, its regular depth or the depth shown on the original plan and field notes. 1920, c. 48, s. 28. Broken front in township with alternate concessions.

28.—(1) In any township that has been surveyed or may hereafter be surveyed into sections or blocks agreeably to an Order in Council dated the 27th day of March, 1829, or sub- Aliquot parts section system.

sequent orders, the division line between the halves of any unbroken regular lot where intended to run from front to rear shall be a line drawn on the same course as it is required to run any side line of such lot which was not run in the original survey from a point on the front of said lot midway between the front angles thereof, and the division line between the halves of any such lot where intended to run from side line to side line across the lot shall be a straight line joining the midway points on the side lines thereof and in dividing any such lot into quarters or other aliquot parts the same methods shall be adopted, but the provisions of this subsection shall not apply to any such lot the whole or part of which has been patented before the 24th day of March, 1911.

Aliquot.

(2) Except as provided in subsection 1 of this section and in section 25 of this Act, every patent, grant or instrument purporting to be for any aliquot part of any concession, block, gore, common, lot or parcel of land in any township, city, town or village shall be construed to be a grant of such aliquot part of the quantity the same may contain, whether such quantity be more or less than that expressed in such patent, grant or instrument.

As to aliquot parts of townships, etc.

When area not to include land covered by water.

(3) Where in any survey of Crown lands made under the authority of the Minister, any lot or other subdivision bordering upon a lake or river is given an acreage covering only the land area, such lot or other subdivision shall include the land area only, and not any land covered by the water of such lake or river.

(4) Subsection 2 shall not affect the rights, if any, of any person where such rights have heretofore been determined by a court of competent jurisdiction. 1920, c. 48, s. 29.

Location of section corners.

29.—(1) Where the concession line in front of two adjacent sections or blocks in any township heretofore or hereafter surveyed into sections or blocks under the authority of an Order in Council dated the 27th day of March, 1829, or subsequent Orders in Council, is shown on the plan and field notes to be on the same astronomic course, and in one and the same straight line, and the side lines between such sections or blocks and between the adjacent sections or blocks on the opposite side of such concession line as shown on the plan and field notes to be on the same astronomic course and in the same straight line, and the position of the original monuments marking the adjacent corners of such sections or blocks cannot be satisfactorily ascertained, the surveyor shall connect the nearest undisputed points on the concession line in front of such sections or blocks by a straight line and join the nearest undisputed points on the side line between the sections or blocks, and the intersection of these two lines shall be the angle of the adjacent sections or blocks. Provided

that the undisputed points on the side line to be connected are not more than twenty chains apart, and that one of them is on either side of the concession line. If such undisputed points on the side line are more than twenty chains apart, the surveyor shall then establish the angle of the sections or blocks by dividing proportionately, as intended in the original survey the distance between the two nearest undisputed angles of lots on the concession line in front of such sections or blocks, and the point so ascertained shall be the angle of the sections or blocks.

Where undisputed points more than 20 chains apart.

(2) Where the concession line in front of two such adjacent sections or blocks, is shown on the plan and field notes to be on the same astronomic course and in the same straight line, and the side lines between such adjacent sections or blocks, and the adjacent sections or blocks on the opposite side of the concession line are shown on the plan and field notes not to be on the same astronomic course or not in one and the same straight line, and the post or posts defining the adjacent angles of such adjacent sections or blocks cannot be found nor the position thereof satisfactorily established and the sides lines are obliterated in such manner that they cannot be accurately determined, the surveyor shall determine the position of the angles that are lost by division in the same proportion as is shown on the plan or field notes of the distance between the nearest angles of lots on the concession line that can be satisfactorily established, one being on either side of the angles that are lost.

Where side lines between adjacent blocks, etc., are not on same astronomic course.

(3) Where the concession line in front of two such adjacent sections or blocks is shown on the plan and field notes not to be in the same astronomic course or not in one and the same straight line and the side lines between such adjacent sections or blocks and the adjacent sections or blocks on the opposite side of such concession line are shown on the plan and field notes to be on the same astronomic course and in the same straight line and the post or posts defining the adjacent angles of such sections or blocks cannot be found, nor the position thereof satisfactorily established, and the concession line is obliterated, the surveyor shall determine the position of the angles that are lost by division, in the same proportion as shown in the plan and field notes of the distance between the other angles on such side lines of such adjacent sections or blocks.

Where concession line not intended to be straight.

(4) Where both the concession lines in front of the adjacent sections or blocks and the side lines between such adjacent sections or blocks and between the adjacent sections or blocks on the opposite side of the concession line have been obliterated in such manner that they cannot be accurately determined and the post or posts marking the adjacent angles of such sections or blocks cannot be found or their position satisfactorily established, the surveyor shall apply to the Minister,

Where concession lines and side lines obliterated.

who shall instruct him how to proceed and the angle determined in accordance with the instructions of the Minister shall be the true and unalterable angle of such sections or blocks.

Proviso.

(5) Provided that the angle of a section that can be determined in accordance with the provisions of this section shall be an undisputed angle for the purpose of this section.

Proviso.

(6) Provided that the provisions of this section shall not apply to any angle of a section re-established prior to the 24th day of March, 1911. 1920, c. 48, s. 30.

As to lands in adjoining concessions included in the same grant.

30. Where a Crown patent, grant or other instrument has been issued for several lots or parcels of land in concessions adjoining each other, the side lines or limits of the lots or parcels of land therein mentioned shall commence at the front angles of such lots or parcels of land respectively and shall be run as hereinbefore provided, and shall not continue on in a straight line through several concessions, that is to say, each lot or parcel of land shall be surveyed and bounded according to the provisions of this Act, independently of the other lots or parcels mentioned in the same patent, grant or instrument. 1920, c. 48, s. 31.

SPECIAL RE-SURVEYS.

Former surveys in the Rainy River District adopted.

31.—(1) Except as in this section is provided, the surveys made under instructions from the Department of the Interior of Canada, of certain townships in the Rainy River District the lots immediately upon the bank of Rainy River having a width of ten chains fronting the river and a varying depth, and the remaining lands so surveyed being subdivided into sections one mile square, and quarter sections of one hundred and sixty acres, with road allowances around each section are hereby adopted and legalized.

Reduction of width of road allowances.

(2) The road allowances in the townships in the District of Rainy River, surveyed under instructions from the Department of Interior of Canada, shall be and are hereby declared to be one chain in width, such chain allowance to be that lying immediately north and east respectively of the lines of survey run upon the ground in the original survey.

Lands detached to form part of adjoining quarter sections or lots.

(3) The strips of land formerly forming parts of the road allowances shall be detached therefrom and attached to and form part of the quarter sections or lots, as the case may be, immediately adjoining the strips of land on the east and north thereof.

Present quarter section or lot posts to remain.

(4) The quarter section posts or lot posts intended to define on the ground the limits of the quarter sections or lots in such townships shall continue to be the governing points, notwithstanding the addition hereby made to the respective quarter sections and lots. 1920, c. 48, s. 32.

32. Where a surveyor is employed to run any boundary line of, or any dividing line or limit between any sections, quarter sections, or other aliquot parts of any section in any township in the Rainy River District subdivided into sections, in accordance with the Dominion lands system of survey or in any of the following townships and parts of townships in the Districts of Algoma and Thunder Bay, namely, Rutherford, Salter, Victoria, all that portion of Shedden south of the fourth concession, the Townships of Spragge, Esten, Thompson, all that portion of Patton south of the third concession, the Townships of Thessalon, Lefroy, Rose, Laird, Meredith, Macdonald, Tarentorus, Aweres, VanKoughnet, Awenge, Korah, Pennefather, Fenwick, sections 31 to 36, both inclusive, of the Township of Haviland, the Townships of Tilley, Parke, Prince, Dennis, Kars, Fisher, Palmer, Herrick, Ryan, Blake, Crooks, Pardee, McIntyre, Macgregor, McTavish, Homer and Byron, and the post or monument planted, erected or marked in the original survey to define the corner of any such section, quarter section or other aliquot part cannot be found, the surveyor shall obtain the best evidence that the nature of the case admits of respecting such post or monument; but if the position of the same cannot be satisfactorily so ascertained, he shall proceed as follows:—

Re-surveys
in townships
on Dominion
land system.

- (a) If the lost post or monument is that of a township corner, he shall report the circumstances to the Minister who shall instruct him how to proceed;
- (b) If the lost post or monument is that of a section or quarter section corner on the boundary line of a township, he shall renew the same by joining the nearest original blazes quarter section or section corners on such boundary by a straight line and shall give to each section or quarter section a breadth proportionate to that shown on the original plan and field notes thereof, of record in the Department, having first taken into account and made due allowance for any roads shown on the plan and field notes;
- (c) If the lost post or monument is that of a section corner in the interior of a township he shall renew the same by intersecting the straight lines adjoining the nearest original blazes or original quarter section or section corners on the adjoining intersecting section boundaries; and where the nearest section corner on any side of the lost post or monument is on a township boundary and that post or monument and also the intervening quarter section posts or monuments are lost, and there are no original blazes between such corners, the surveyor shall first renew the post monuments on the section corner or corners

on such township boundary in accordance with the provisions of the next preceding clause;

- (d) If the lost post or monument is that of a quarter section corner in the interior of a township, he shall renew the same by joining the nearest original blazes or adjacent section corners determined, if necessary, as hereinbefore provided, and shall give to each of the adjacent quarter sections a breadth proportionate to that shown on the original plan and field notes;
- (e) In laying out interior boundaries of half sections or of quarter sections he shall connect the opposite quarter section corners determined, if necessary, as hereinbefore provided, by straight lines;
- (f) In laying out interior boundaries of other aliquot parts of any section he shall give to each aliquot part its proportionate share of breadth and interior depth and connect the resulting terminal points by straight lines. 1920, c. 48, s. 33.

Township in which side lines only were surveyed.

To establish angles of lots.

33.—(1) Where a surveyor is called upon to establish any front or rear angle or side line of a lot in any township in the original survey of which the side lines only of the lots were surveyed and in which the concession lines were not surveyed and the original monuments defining the position of such angles or side line cannot be found nor the location of the same be satisfactorily ascertained, the surveyor shall measure the true distance between the two nearest undisputed angles of lots on such side lines, one being on either side of the angle which it is desired to establish and shall divide such distance into the number of lots that the same contained in the original survey, making due allowance for any road or roads and giving to each lot its proportionate share of depth, as shown on the original plan and field notes, and shall plant such posts or monuments as he may be required to plant at the lot angles so ascertained and straight lines joining the front angles or the rear angles of a lot so ascertained shall be the true boundaries of those ends of the lot which were not surveyed in the original survey.

To establish side lines.

(2) Where in any such township a surveyor is called upon to establish any side line or part thereof run in the original survey that has become obliterated, he shall join by a straight line or lines the places where such side line can be satisfactorily ascertained and where such line is obliterated at either end, he shall establish such end by measurement only along the township boundary or base line in the manner in which such measurement was made in the original survey, as shown on the plan and field notes. 1920, c. 48, s. 34.

FORM 1.

(Section 21 (3).)

SURVEYOR'S RETURN.

Township of

County of.....

I hereby certify that the foregoing lot lines in the above township were run by me during the year ending December 31st, 19 , under the provisions of *The Surveys Act*.

Line between..... Concession..... Date.....

Lot and lot....., etc., etc.

Dated at, this..... day of....., 19 .

A. B.,
Ontario Land Surveyor.

1920, c. 48, Form 1.

5. MISCELLANEOUS.

CHAPTER 203.

The Architects Act.

Association
continued.

1. The Ontario Association of Architects, hereinafter called the Association, is hereby continued. R.S.O. 1914, c. 167, s. 2.

Powers as
to real estate.

2. The Association may purchase, take and possess for the purposes of the Association, but for no other purpose, and after acquiring the same may sell, mortgage, lease or dispose of any real estate. R.S.O. 1914, c. 167, s. 3.

Membership.

3. The persons who are now members of the Association and all persons who shall be hereafter registered as architects under this Act and no others shall be members thereof, subject to the by-laws of the Association and to the provisions of this Act. R.S.O. 1914, c. 167, s. 4; 1925, c. 52, s. 2.

Council of
Management.

4. There shall be a Council of Management of the Association, hereinafter called the Council, to be appointed in the manner provided by this Act. R.S.O. 1914, c. 167, s. 5.

Council, how
composed.

5.—(1) The Council shall be composed of nine persons, who shall be British subjects, and have resided and practised the profession of architecture within Ontario for at least ten years.

Quorum.

(2) Any five members of the Council shall form a quorum. R.S.O. 1914, c. 167, s. 6.

Election.

6. The members of the Council shall be elected by ballot, in such manner as may be provided by the by-laws of the Association, at its annual meeting, or at a special meeting called for that purpose, and the members of the Association obtaining the greatest number of votes shall be declared elected. R.S.O. 1914, c. 167, s. 7.

Qualification.

7. No person shall be eligible for election to the Council, or qualified to fill any vacancy therein, or to vote for any member thereof unless duly qualified under the provisions of this Act and the by-laws of the Association. R.S.O. 1914, c. 167, s. 8.

8. Except in the case of an election or an appointment to fill a vacancy caused by death or resignation the members of the Council shall hold office for the term of three years, three retiring each year. R.S.O. 1914, c. 167, s. 9.

Term of office.

9.—(1) In case of the resignation or death of any member or members of the Council, not exceeding four, the other members may fill the vacancies, to hold office until the time of the holding of the next annual meeting, provided that such meeting is not to be held within three months of the occurring of such vacancies.

Vacancies, how filled.

(2) In case of the resignation or death of five or more members of the Council, the president or the vice-president of the Association or, in case of their default for a period of ten days, any five members in good standing may call a special meeting of the Association, upon a notice of not less than ten days, for the purpose of filling the vacancies.

Special meeting.

(3) In case of an election to fill the vacancies referred to in subsections 1 and 2, the member receiving the greater number of votes shall be considered the member elected to fill the vacancy which will require the longer term to expire, and so on until the vacancies are filled. R.S.O. 1914, c. 167, s. 10.

Election, how determined.

10. In case of any doubt or dispute as to who has been elected a member of the Council, or as to the legality of the election of any member, the other duly elected members shall be a committee to hold an enquiry and decide who is the legally elected member, and the person whom they decide to have been elected shall be deemed to be legally elected, and if the election is found to have been illegal, the committee shall order a new election. R.S.O. 1914, c. 167, s. 11.

Proceedings where election disputed.

11. The Council shall annually elect from amongst its members a president and two vice-presidents, and shall appoint a registrar, a treasurer, a solicitor, an auditor and such other officers as may be deemed necessary for carrying out the objects of this Act, who shall hold office during the pleasure of the Council, and who shall, as well as being officers of the Council, hold the like positions as officers of the Association. The office of the president shall not be held by any one person for more than two years in succession. R.S.O. 1914, c. 167, s. 12; 1925, c. 52, s. 3.

President and officers.

12. Meetings of the Association and of the Council shall be held at such times and places as may be fixed by the by-laws of the Association or Council respectively; and in the absence of any rule or regulation as to the summoning of meetings of the Association or of the Council, the president, or, in the event of his absence or death, the registrar may summon the same for such time and place as he may think fit, by notice to be mailed to each member. R.S.O. 1914, c. 167, s. 13.

Power to regulate meetings of Council and Association.

Who to
preside at
meetings.

13. In the event of the absence of the president from any meeting, either of the vice-presidents, or, in their absence, some other member to be chosen from among the members present shall act as president. R.S.O. 1914, c. 167, s. 14.

Majority to
decide.

14.—(1) All questions submitted to the Association or to the Council shall be decided by a majority of the members present, except as otherwise provided by the by-laws of the Association.

Exception.

Quorum.

(2) Any twenty members of the Association shall form a quorum. 1925, c. 52, s. 4.

Casting vote.

15. At all meetings the president for the time being shall have only a casting vote, and in the case of a tie at an election he shall have a casting vote in addition to his vote as a member of the Association. R.S.O. 1914, c. 167, s. 16.

Payment of
expenses of
members of
Council.

16. There shall be paid to the members of the Council such fees for attendance, and such reasonable travelling expenses, as may be fixed by by-law of the Association passed at an annual meeting. R.S.O. 1914, c. 167, s. 17.

Salaries.

17. The Council may by by-law fix the salaries or fees to be paid to the officers of the Association and to the board of examiners hereinafter provided for. R.S.O. 1914, c. 167, s. 18.

By-laws.

18. The Council may pass by-laws not inconsistent with the provisions of this Act for,—

Board of
examiners.

(a) the appointment of a board of examiners for the purpose of ascertaining and reporting upon the qualifications of candidates for membership;

Examina-
tions.

(b) prescribing the scope of examinations to be held by the board of examiners and the evidence to be furnished by candidates as to their previous training, experience and good character;

Admission
to member-
ship.

(c) the admission to membership of candidates possessing the training, experience and good character required, who have passed the prescribed qualifying examinations;

Fees of
candidates.

(d) fixing, levying and collecting fees to be paid by candidates upon application and annual fees to be paid by members;

Associates,
honorary
members.

(e) the creation of qualified classes of membership for associates and honorary members prescribing the qualifications for and the rights of each of such classes;

Professional
conduct.

(f) prescribing such rules as may be deemed necessary for the conduct of members in the practice of their profession as architects and for the maintenance of the dignity and honour of the said profession;

(g) the government and discipline of the members, including the suspension or expulsion of any member for misconduct or violation of the rules or by-laws of the Association; Discipline.

(h) all such other purposes as may be deemed necessary or convenient for the management of the Association in the conduct of its business; Other matters.

and may alter and amend such by-laws when deemed advisable. 1925, c. 52, s. 5.

19. The Association may admit to membership any person being at least twenty-one years of age who shall have furnished such evidence as the Council may by by-law require as to training, experience and good character and shall have passed the prescribed qualifying examinations. 1925, c. 52, s. 7. Qualification.

20. All candidates for membership shall be presented by a member of the Council and shall cause their full names to be entered with the registrar and shall pay such fees and submit to such examinations as shall be prescribed. 1925, c. 52, s. 8. Application for membership.

21. The registrar shall keep a register to be called "The General Register," of all members, and shall enter opposite the names of all registered persons who have died a statement of that fact, and shall make all necessary alterations in the addresses of persons registered and, subject to the provisions of this Act, shall keep the register in accordance with the by-laws and regulations of the Council. R.S.O. 1914, c. 167, s. 23; 1925, c. 52, s. 9. General Register.

22.—(1) No person shall be entitled to take or use the name or title of "Registered Architect," either alone or in combination with any other word or words, or any name, title or description, implying that he is registered under this Act, unless he is so registered. Restriction of right to use title.

(2) Any person who, not being registered under this Act, takes or uses any such name, title or description shall incur a penalty not exceeding \$25 for the first offence and not exceeding \$100 for each subsequent offence. R.S.O. 1914, c. 167, s. 24. Penalty.

23. If the registrar wilfully makes or causes to be made any falsification in any matter relating to the register he shall, on conviction thereof, be liable to be imprisoned for any term not exceeding twelve months. R.S.O. 1914, c. 167, s. 25. Penalty for registrar falsifying register.

24. Any person who wilfully procures or attempts to procure registration under this Act by making or producing, or causing to be produced or made, any false or fraudulent Penalty for procuring false registration.

representation or declaration, either verbally or in writing, that he is entitled to such registration shall, on conviction thereof, be liable to be imprisoned for any term not exceeding twelve months. R.S.O. 1914, c. 167, s. 26.

Register of
practitioners.

25.—(1) The registrar shall, in every year, under the direction of the Council, cause to be printed, published and kept for inspection at his office, free of charge, a register to be called "The Architects' Register," of the names, in alphabetical order according to the surnames, with the respective residences of all persons appearing on the general register on the next preceding 1st day of January.

Evidence of
registration.

(2) A copy of such register, purporting to be so printed and published, shall be evidence in all courts and before all justices of the peace and others that the persons therein mentioned are registered according to the provisions of this Act.

Certified
copy of
entry.

(3) In the case of any person whose name does not appear in such copy a certified copy under the hand of the registrar of the entry of the name of such person in the general register shall be evidence that such person is registered under the provisions of this Act. R.S.O. 1914, c. 167, s. 27.

Witness
fees of
architects.

26. Every architect summoned to attend any civil or criminal court for the purpose of giving evidence in his professional capacity, for each day he so attends shall be entitled to \$5, in addition to his travelling expenses, to be taxed and paid in the manner by law provided with regard to the payment of witnesses attending such court. R.S.O. 1914, c. 167, s. 28.

Penalty in
case architect
makes a false
certificate.

27. Every architect who wilfully makes any false certificate in respect of any work done, or the value or condition of any work or building, besides being liable in damages for any injury thereby suffered, shall incur a penalty not exceeding \$100. R.S.O. 1914, c. 167, s. 29.

Recovery of
fees and
penalties.

28. All fees payable under this Act may be recovered as ordinary debts due to the Association. R.S.O. 1914, c. 167, s. 30 (1), *part*.

Application
of Rev.
Stat. c. 121.

29.—(1) *The Summary Convictions Act* shall apply as to offences against this Act and all penalties recovered under this Act shall immediately upon the recovery thereof be paid by the convicting magistrate to the registrar.

Who may be
complainant.

(2) Any person may be prosecutor or complainant under this Act, and the Council may allot such portion of the penalties as it deems expedient to the prosecutor. R.S.O. 1914, c. 167, s. 30 (2, 3).

30.—(1) Except as herein otherwise provided, all notices and documents required by or for the purposes of this Act to be sent may be sent by registered post, and shall be deemed to have been received at the time when the same would be delivered in the ordinary course of the mail. Service of notices.

(2) Such notices and documents when sent to a person registered under this Act shall be deemed to be properly addressed if addressed to him according to his address registered in the general register. What to be deemed proper address. R.S.O. 1914, c. 167, s. 31.

31.—(1) All money arising from fees payable on registration, from the annual renewal fees or from the sale of copies of the register, or otherwise, shall be paid to the registrar and shall be applied in accordance with such regulations as may be made by the Council for defraying the expenses of the Association. Application of funds.

(2) The Council may invest in the name of the Association any money not so expended in such securities as trustees may properly invest in, and any income derived from such invested sums shall form part of the ordinary income of the Association. Investments. R.S.O. 1914, c. 167, s. 32.

32. The registrar and treasurer shall enter in books to be kept for that purpose a true account of all sums of money by them respectively received and paid under this Act, and such account shall be audited by the auditor and submitted to the Council and to the Association when and so often as they may require. Accounts of Association. R.S.O. 1914, c. 167, s. 33.

CHAPTER 204.

The Stenographic Reporters' Act.

Interpretation. **1.** In this Act, "Association" shall mean The Chartered Stenographic Reporters' Association of Ontario. R.S.O. 1914, c. 168, s. 2.

Powers as to land. **2.** The Association may purchase, take and possess for the purposes of the Association, but for no other purpose, and after acquiring the same may sell, mortgage, lease or dispose of any real estate the annual value of which shall not at any time exceed \$5,000. R.S.O. 1914, c. 168, s. 4.

Membership. **3.** Subject to the provisions of this Act and to the by-laws of the Association the Association shall consist of its present members and all persons who shall cause their names to be registered under the provisions of this Act. R.S.O. 1914, c. 168, s. 5.

Educational powers. **4.**—(1) The Association shall have power to promote and increase by all lawful ways and means the knowledge, skill and proficiency of its members in all things relating to the business or calling of a stenographer, and to that end to establish classes, lectures and examinations and prescribe such tests of competence, fitness and moral character as may be thought expedient to qualify for admission to membership, to grant diplomas and certificates of efficiency, and to authorize its members to use the distinguishing title "Chartered Stenographic Reporter" or the letters "C.S.R."

Examination of students and affiliation. (2) The Association may also prescribe for students of stenography, who desire to become members of the Association, such examinations and may grant to them such certificates of competency as it sees fit, and may organize the students into a society in affiliation with itself for study and mutual improvement. R.S.O. 1914, c. 168, s. 6.

Power to make by-laws. **5.**—(1) The Association, in general or special meeting assembled after due notice, may pass by-laws for carrying out its objects.

Pre-requisites for validity of by-laws. (2) Unless otherwise provided by the by-laws no new by-law shall be passed, nor shall any by-law be altered or repealed, except by a two-thirds vote of the members present at a meeting of the Association, and only after at least two

weeks' notice in writing of the proposed alteration or repeal shall have been given or mailed to each member. R.S.O. 1914, c. 168, s. 7.

6.—(1) The affairs, business and concerns of the Association shall be managed by a council composed of nine persons who shall be British subjects, who have resided and practised the profession of stenography within Ontario for at least five years. Council.

(2) The members of the council shall be elected by voting papers in the manner provided for by the by-laws, at the annual meeting, or at a special meeting called for that purpose, and the members obtaining the greatest number of votes shall be declared elected. Election by voting papers.

(3) No person shall be eligible for election to the council or qualified to fill any vacancy therein or to vote for any member thereof unless duly qualified under the provisions of this Act and the by-laws of the Association. Only qualified members eligible for Council.

(4) The members of the council now in office shall respectively hold office for the remainder of the term for which they were elected and until their successors are chosen. Term of office.

(5) Subsequently elected members shall hold office for three years from the time of their election and until their successors are chosen. Idem.

(6) A member chosen to fill a vacancy shall hold office for the residue of the term for which his predecessor was elected or appointed. Of members chosen to fill vacancy.

(7) Five members of the council shall form a quorum. Quorum. R.S.O. 1914, c. 168, s. 8.

7.—(1) At the close of the annual meeting the Council shall meet and choose from among themselves a president, a vice-president, a secretary, a treasurer and such other officers as may be provided for by the by-laws. Officers of the Association.

(2) In the event of the office of president becoming vacant the vice-president shall become president for the remainder of the term. Filling vacancy of office of president;

(3) All other vacancies among the officers or the members of the council shall be filled by the council. of members of Council.

(4) The council may remove any officer for misconduct or other sufficient cause, and may appoint his successor for the remainder of the term. R.S.O. 1914, c. 168, s. 9. Removal.

8.—(1) The council may, by a vote of two-thirds of all the members thereof, admit to membership in the Association, without examination, a stenographic reporter who by reason of his professional reputation and standing is deemed qualified for membership. Admission by vote of Council.

Honorary membership.

(2) The council may also, by a two-thirds vote of all its members, admit as honorary members of the Association such persons resident in Ontario or elsewhere as they may deem deserving.

Status of honorary members.

(3) An honorary member shall not be entitled to vote at an election or at a meeting of the Association or to be elected a member of the council. R.S.O. 1914, c. 168, s. 10.

Annual meeting.

9. The annual meeting of the members of the Association for the election of the council, and for such other business as may be brought before such meeting, shall be held at such time and place and under such regulations and after such notices as the by-laws of the Association shall prescribe. R.S.O. 1914, c. 168, s. 11.

Register of members.

10.—(1) The council shall cause to be kept by the secretary a register in which shall be entered in alphabetical order the names of all members in good standing, and those members only whose names are entered in the register shall be entitled to the privileges of membership, and the register shall at all times be open to inspection by any person free of charge.

Register as evidence.

(2) The register, or a copy of it certified by the secretary, shall be *prima facie* evidence that the persons therein named are members of the Association in good standing. R.S.O. 1914, c. 168, s. 12.

Limitation of term of diplomas and certificate.

11. The Association may limit the term of all diplomas and certificates granted by it to one year from the date of granting the same, and may withhold the granting or renewal of the same, together with all the other privileges of membership, from any person who neglects to pay the prescribed fees when they are due and so long as they remain unpaid. R.S.O. 1914, c. 168, s. 13.

Entrance and annual fees.

12.—(1) The council may fix an entrance and an annual fee to be paid by all members to the Association, and may vary the amount from time to time; and no member shall be personally liable for any debt of the Association beyond the amount of his unpaid fees.

Examination fees.

(2) The council may also prescribe examination fees to be paid by applicants for examination. R.S.O. 1914, c. 168, s. 14.

Restriction of right to use title.

13.—(1) No person shall be entitled to take or use the title of "Chartered Stenographic Reporter," or the letters "C.S.R.," either alone or in combination with any other words, or any name, title or description implying that he is a member of the Association, unless he is a member in good standing.

(2) Every person who uses such title or such letters contrary to the provisions of this section shall incur a penalty not exceeding \$25 for the first offence and not exceeding \$100 for each subsequent offence, to be recoverable under *The Summary Convictions Act*. R.S.O. 1914, c. 168, s. 15, *part*. Penalty.
Rev. Stat.
c. 121.

14. The Association may by by-law provide for the suspension or expulsion, after due enquiry, of any member for misconduct or violation of the by-laws of the Association. R.S.O. 1914, c. 168, s. 16. Suspension
and expulsion
of
members.

15.—(1) All fees payable under this Act may be recovered as debts due to the Association. Recovery
of fees.

(2) Penalties recovered under the authority of this Act shall be paid immediately on the recovery thereof by the convicting justice to the treasurer of the Association. Recovery
and
application
of penalties.

(3) The council may allot such portion of a penalty as may be deemed expedient to the prosecutor or complainant. R.S.O. 1914, c. 168, s. 17. Idem.

16. If a person ceases to be a member of the Association he shall not, nor shall his representatives, have any interest in or claim against the funds or property of the Association. R.S.O. 1914, c. 168, s. 18. Ex-members
to have no
claims
against the
funds.

CHAPTER 205.

The Chartered Accountants Act.

Institute of
Accountants,
46 Vict. c. 62.

1. In this Act "Institute" shall mean The Institute of Chartered Accountants of Ontario. R.S.O. 1914, c. 169, s. 2, *part*.

Powers as
to real estate.

2.—(1) The Institute may purchase, take and acquire for the purposes of the Institute, but for no other purpose, and after acquiring the same may sell, mortgage, lease or dispose of any real estate.

Benevolent
fund.

(2) The Institute may receive, manage and invest voluntary contributions and donations from members or others as a benevolent fund for the benefit of needy members or their families and the families of deceased members. R.S.O. 1914, c. 169, s. 3.

Objects.

3. The objects of the Institute shall be to promote and increase the knowledge, skill and proficiency of its members in all things relating to the business or profession of an accountant, and to that end to establish classes, lectures and examinations, and to prescribe such tests of competency, fitness and moral character as may be thought expedient to qualify for admission to membership. R.S.O. 1914, c. 169, s. 4.

Council.

4. There shall be a council of the Institute hereinafter called the council, which shall consist of fifteen members, of whom not less than two-thirds shall be public accountants, residing and practising within Ontario. R.S.O. 1914, c. 169, s. 5.

Annual
meeting.

5.—(1) An annual meeting shall be held for the election of the council, and for such other business as may be brought before the meeting, at such time and place and under such regulations and after such notices as shall be determined by the by-laws of the Institute, and in default of such election being held at the proper time the existing council shall continue to act until their successors are elected.

Nominations
for council.

(2) Nominations of candidates for election to the council shall be in writing, signed by two members of the Institute, and shall be lodged with the secretary at least fourteen days before the date of the annual meeting.

(3) A voting paper containing the names, alphabetically arranged, of the persons nominated shall be sent by mail to each member in good standing at least ten days before the date of the annual meeting. Election of council.

(4) The voting paper shall be signed by the voter and shall be lodged with the secretary on or before the day of the annual meeting, and the council shall be elected by means of such voting papers, whether the members voting be present at or absent from the annual meeting. Voting papers.

(5) All vacancies which occur in the council, by death or otherwise, in the interval between two annual meetings, shall be filled by the council. Vacancies. R.S.O. 1914, c. 169, s. 6.

6. The council shall elect from among its number a president, two vice-presidents, a secretary and a treasurer (the same person being eligible for both the last mentioned offices), and shall appoint a registrar and such other officers as may be provided for by the by-laws. President and officers. R.S.O. 1914, c. 169, s. 7.

7. The council may fix an entrance and annual fee or subscription to be paid by all members, and may vary the amount thereof from time to time. Fees. R.S.O. 1914, c. 169, s. 8.

8.—(1) The council may make by-laws for carrying out the objects of the Institute, but no such by-law or any amendment thereto shall have force or take effect until it has been approved at an annual meeting of the Institute, or at a special general meeting called to consider the same. By-laws.

(2) Any such by-law may be annulled by the Lieutenant-Governor in Council. Annulment. R.S.O. 1914, c. 169, s. 9.

9. The council may,

- (a) prescribe a curriculum of studies to be pursued by the students; Examinations.
- (b) determine as to the fitness and moral character of persons applying to be examined;
- (c) prescribe the subjects upon which candidates for certificates of competency shall be examined;
- (d) fix standards of skill and competency;
- (e) establish a scale of fees to be paid by persons applying for examination;
- (f) appoint examiners, define their duties and fix their remuneration; and
- (g) make such rules and regulations, not contrary to the provisions of this Act or the by-laws of the Institute, in respect to examinations as may be expedient. R.S.O. 1914, c. 169, s. 10.

When to be held.

10. The council shall hold examinations at least once in each year. R.S.O. 1914, c. 169, s. 11.

Equivalent examinations.

11. The council shall by by-law prescribe the conditions upon which persons who have passed the examinations of other corporate bodies having the same or similar objects may be admitted as members of the Institute, and such conditions shall be reasonable and subject to amendment by the Lieutenant-Governor in Council, and if the council omits to pass such a by-law the Lieutenant-Governor in Council may prescribe such conditions. R.S.O. 1914, c. 169, s. 12.

Lectures.

12. The Institute may establish lectures and classes of students in accounts, and, subject to the approval of the Lieutenant-Governor in Council, may make arrangements with any university or college in Ontario for the attendance of students in accounts at such lectures or classes in such university or college as may come within the course of subjects prescribed by the rules, by-laws and regulations of the Institute, and may agree with any such university or college for the use of any library or museum or property belonging to or under the control of such university or college, and may affiliate with any such university or college, and may enter into all arrangements necessary for that end, upon such terms as may be agreed upon. R.S.O. 1914, c. 169, s. 13.

Attendance at university.

Membership.

13. The membership of the Institute shall consist of two classes, namely, Fellows and Associates. R.S.O. 1914, c. 169, s. 14.

Use of titles.

14. Every member of the Institute shall have the right to use the designation "Chartered Accountant," and may use after his name, if he is a Fellow, the initials "F.C.A.," signifying "Fellow of the Chartered Accountants," and if he is an Associate the initials "A.C.A.," signifying "Associate of the Chartered Accountants." R.S.O. 1914, c. 169, s. 15.

Honorary membership.

15. Persons who have rendered conspicuous services to the Institute, either in the advancement of its educational objects or its general welfare or by material contributions to the library or other funds of the Institute, may, by the unanimous vote of the members present at any meeting of the Institute, be elected to honorary membership therein, but honorary membership shall not confer the right to use the designation "Chartered Accountant," or to be elected to the council or to vote. R.S.O. 1914, c. 169, s. 16.

Status of such.

Restrictions as to use of titles.

16.—(1) No person shall be entitled to take or use the designation "Chartered Accountant" or the initials "F.C.A.," "A.C.A.," or "C.A.," either alone or in combination with any other words, or any name, title or description implying that he is a chartered accountant, or any name, title, initials

or description implying that he is a certified accountant or an incorporated accountant, unless he is a member of the Institute in good standing and registered as such.

(2) Any person who contravenes any of the provisions of this section shall incur a penalty not exceeding \$25 for each offence recoverable under *The Summary Convictions Act*. Penalties. Rev. Stat. c. 121.

(3) This section shall not apply to those persons who, being members in good standing of the Dominion Association of Chartered Accountants on the 16th day of December, 1909, were on that day entitled to membership in the Institute or to apply therefor. R.S.O. 1914, c. 169, s. 17. Exception as to certain members of D.A.C.A.

17.—(1) The council shall cause to be kept by the secretary or registrar a register in which shall be entered in alphabetical order the names of all members in good standing, and those members only whose names are entered in the register shall be deemed entitled to the privileges of membership in the Institute, and such register shall at all times be subject to inspection by any person free of charge. Membership register.

(2) Such register, or a copy of the same duly certified by the secretary or registrar, shall be *prima facie* evidence in all courts and before all persons that the persons whose names are entered therein are members of the Institute in good standing, and the absence of the name of any person from such register shall be *prima facie* evidence that such person is not a member of the Institute. R.S.O. 1914, c. 169, s. 18. Register as evidence.

18. The Institute may by by-law provide for the suspension or expulsion, on complaint and after due enquiry, of any member for misconduct or for violation of the rules or by-laws of the Institute. R.S.O. 1914, c. 169, s. 19. Suspension or expulsion.

19. Nothing in this Act shall affect or interfere with the right of any person not a member of the Institute to practise as an accountant in Ontario, nor with the right of any person, not residing or having an office therein, to use any designation as accountant. R.S.O. 1914, c. 169, s. 20. Rights of certain persons not affected.

CHAPTER 206.

The Professional Engineers Act.

Interpreta-
tion."Associa-
tion."

"Board."

"Council."

"Licensed."

"License."

"Member."

"President."

"Professional
Engineer-
ing."**1.** In this Act,

- (a) "Association" shall mean the Association of Professional Engineers of the Province of Ontario;
- (b) "Board" shall mean the board of examiners of the association;
- (c) "Council" shall mean the council of the association;
- (d) "Licensed" shall mean that permission has been granted by the council to a non-resident engineer to practise temporarily without being registered, and "License" shall mean the official certificate under the seal of the Association evidencing such permission;
- (e) "Member" shall mean a registered member of the Association;
- (f) "President" shall mean the president of the Association;
- (g) "Professional Engineering" save as hereinafter mentioned, shall mean the advising on, the reporting on, the designing of, the supervising of the construction of, all public utilities, industrial works, railways, tramways, bridges, tunnels, highways, roads, canals, harbour works, lighthouses, river improvements, wet docks, dry docks, floating docks, dredges, cranes, drainage works, irrigation works, waterworks, water purification plants, sewerage works, sewage disposal works, incinerators, hydraulic works, power transmission, steel, concrete and reinforced concrete structures, electric lighting systems, electric power plants, electric machinery, electric apparatus, telephone systems, telegraph systems, cables, wireless plants, mineral property, mining machinery, mining development, mining operations, gas and oil developments, smelters, refineries, metallurgical machinery, and equipment and apparatus for carrying out such operations, machinery, steam engines, hydraulic turbines, pumps, internal combustion engines and other mechanical structures, chemical and metallurgical machinery, apparatus and processes, aeroplanes, air ships, and all other engineering works;

- (h) "Registered" shall mean that an engineer has been admitted to membership in the Association and that his name has been enrolled in the register; and "Certificate of Registration" shall mean the official certificate under the seal of the Association evidencing the same; "Registered."
- (i) "Registrar" shall mean the registrar of the association; "Registrar."
- (j) "Secretary" shall mean the secretary or the secretary-treasurer of the association; "Secretary."
- (k) "Vice-President" shall mean the vice-president of the Association. 1922, c. 59, s. 2. "Vice-President."

2.—(1) All persons registered as professional engineers under the provisions of this Act shall constitute the "Association of Professional Engineers of the Province of Ontario" and shall be a body politic and corporate, with perpetual succession and a common seal. What shall constitute Association.

(2) The head office of the Association shall be at the City of Toronto. Head office.

(3) The Association shall have power to acquire and hold real or personal property not producing at any time an annual income in excess of \$10,000, and to alienate, mortgage, lease, or otherwise dispose of such property or any part thereof as occasion may require. Power to acquire and hold property.

(4) All fees, fines and penalties receivable and recoverable under this Act shall belong to the Association. 1922, c. 59, s. 3. Fees, fines, etc.

3. The Association may pass by-laws not inconsistent with the provisions of this Act for,— By-laws.

- (a) the election of the council;
- (b) the government and discipline of the members;
- (c) the management of its property;
- (d) the appointment of such officers as may be necessary for carrying out the purposes of the Association;
- (e) the maintenance of the Association by fixing, levying and collecting the necessary fee from each member and licensee, which fee shall not exceed \$10 per annum;
- (f) the admission of candidates to registration;
- (g) the keeping of the register;
- (h) fixing dates and places of meetings of the Association;
- (i) all such other purposes as may be deemed necessary or convenient for the management of the association, or the conduct of its business, 1922, c. 59, s. 4.

By-law to require approval of Lieutenant-Governor.

4. No by-law of the Association or amendment thereto shall be valid or take effect until approved by the Lieutenant-Governor in Council. 1922, c. 59, s. 5.

Classification.

5.—(1) For purposes of representation upon the council and for registration, and for such purposes only as are hereinafter set out, membership of the Association shall be subdivided into the following branches; civil engineers, mechanical engineers, chemical engineers, electrical engineers, mining engineers.

Member may register in all branches.

(2) Each member admitted to the Association may register in all branches for which he can submit credentials satisfactory to the authority governing admission to each of such branches, but he shall, however, vote in only one such branch according to his own selection, but may transfer his vote to some other branch in which he is registered, upon the approval of the council. 1922, c. 59, s. 6.

Additional branches.

6. Additional branches may be established by the Lieutenant-Governor in Council upon the petition of not less than one hundred registered members of the Association, provided such petition be approved by the council, or upon petition of two hundred members of the Association if such approval be not obtained. 1922, c. 59, s. 7.

Council.

7.—(1) The council shall consist of a president, a vice-president, an immediate past-president and three councillors from each branch of the Association, all of whom shall be registered members of the Association.

President.

(2) The president, who shall be elected annually by vote of members, shall hold office until his successor is elected, shall act as presiding officer at the meetings of the council and of the Association, voting only when the votes are evenly divided, and on his retirement shall hold office as councillor for the next year succeeding.

Vice-President.

(3) The vice-president shall be elected annually by vote of members, and shall have all the powers of the president during the absence of the latter.

Councillors.

(4) Two councillors shall be elected annually from each branch of the Association by the vote of the registered members in such branch, and one councillor from each branch shall be appointed by the Lieutenant-Governor in Council.

Registrar and Secretary.

(5) The council shall appoint a registrar and a secretary who shall hold office during the pleasure of the council. 1922, c. 59, s. 8.

Members of Council to control registration and licensing.

8.—(1) The members of the council representing each branch shall control, subject to the terms of this Act, the conditions for registration and for licensing in such branch, including credentials, examinations and exemptions,

(2) The council as a whole shall have the power to review the establishment of and the carrying out of the conditions for registration as administered by the representative councillors from all branches, and shall have the power to require the representatives of such branches to modify their administration in order to maintain a standard of qualification in members satisfactory to the council. Powers of Council.

(3) The revocation of certificates and the reissuing of such certificates, the questions of discipline, fines, suspensions, expulsion, finance, overlapping of practice in branches, and all matters not coming within the provisions of subsection 1 shall be dealt with by the council as a whole. 1922, c. 59, s. 9. Revocation of certificates.

Registration Within One Year.

9.—(1) Any person residing in the Province of Ontario at the date of the passing of this Act, who has been engaged in engineering for five or more years, shall be entitled to be duly registered as a member of the Association without examination, provided that such person shall produce to the council, within one year of the passing of this Act, satisfactory evidence of having been so engaged. Qualifications for membership.

(2) Any person residing in the Province of Ontario, not qualified as in subsection 1 above, may make application for membership in the Association and shall successfully pass such examination as shall be prescribed by council, or submit credentials satisfactory to the council, to be admitted to membership. Where persons not so qualified.

(3) Any person who applies for membership in the Association within one year from the passing of this Act shall submit to the council with his application a statement giving a summary of his engineering experience which statement shall be made upon the forms prescribed by the council. Statement to be submitted with application.

(4) The council may require the applicant for membership to prove the correctness of the statements made in his application by attesting by oath or by affidavit. Affidavit.

(5) If the evidence of employment as engineer for five years, as submitted by the applicant, be considered satisfactory by the members of the council representing the branch to which admission is desired, he shall be admitted to membership in the Association without examination and the registrar shall issue a certificate of registration to the applicant and enter his name in the register. Admission to membership without examination.

(6) Any person duly authorized and registered as an Ontario land surveyor at the date of the passing of this Act shall be entitled on application within one year of the passing of this Act, to be admitted as a member of the Association in the branch of civil engineers. 1922, c. 59, s. 10. Ontario land surveyor entitled to membership.

Period of
employment

10. If the applicant for membership has been engaged for less than five years as a professional engineer at the date of the passing of this Act, he shall submit certificates and proofs respecting the period of his employment to the date of his application, and the members of council, representing the branch to which admission is desired, will determine from the evidence so submitted the period of such employment. 1922, c. 59, s. 11.

Registration After One Year.

Notice of
employment
to be filed
annually.

11. Any person resident in the Province of Ontario who has applied for membership in the Association within one year from the passing of this Act, who has not been admitted under the provisions of section 9, shall file with the secretary a notice setting forth his employment and the name of his employer, which notice shall be filed annually during the term necessary to complete the five years of employment, and if such person's record of employment is satisfactory, he shall be admitted to membership without examination. 1922, c. 59, s. 12.

Statement
to be sub-
mitted to
Council.

12.—(1) Any person who applies for membership in the Association after one year from the passing of this Act shall submit to the council with his application a statement giving a summary of his experience as an engineer or surveyor which statement shall be made upon the forms prescribed by the council.

Affidavit.

(2) The council may require the applicant for membership to prove the correctness of the statement made with his application by attesting by oath or by affidavit.

Admission
to member-
ship with-
out exam-
ination.

(3) If the evidence of engineering experience for not less than five years, as submitted by the applicant, is considered satisfactory by members of council representing the branch to which admission is desired, the applicant shall be admitted to membership after successfully passing the prescribed examination in the theory and practice of such branch of engineering or, in lieu of such examination, upon submission of evidence satisfactory to the members of council representing such branch and to the council as a whole.

Where exam-
ination re-
quired.

(4) An applicant who is required to successfully pass an examination may select any one or more branches of engineering for his examination. 1922, c. 59, s. 13.

Member of
similar asso-
ciation in
another
province.

13. Any resident of Canada who may come to reside in the Province of Ontario and who at the time is a duly registered member of an association of professional engineers in any province of the Dominion of Canada similarly constituted to this association, may upon application made to council be admitted to membership upon producing a certificate of membership in such province. 1922, c. 59, s. 14.

14. Any person who comes to reside in Ontario who is a registered member of any association or institute in other parts of the British Empire or in the United States similarly constituted to this Association, and which grants reciprocal privileges and who applies for membership in this Association, may be admitted to membership upon producing to council a certificate of membership in such association or institute. 1922, c. 59, s. 15.

In British
Empire or
United
States.

Graduates.

15.—(1) Any graduate in any branch of engineering or of science, the practice of which constitutes professional engineering as defined in clause *g* of section 1 from any university recognized by the council upon presenting evidence of graduation satisfactory to the council shall be granted, as part of his term of employment, the actual time of instruction in such university, this total not to exceed four years and such graduate shall not be required to submit to a written examination.

Graduates of
Universities.

(2) Graduates or undergraduates of recognized engineering colleges or *bona fide* assistants serving under articles may during the remainder of their respective periods required for registration be engaged in professional engineering as defined in this Act under the guidance of professional engineers who assume full responsibility for their work, but shall not be classed as professional engineers until registered as members of the Association as provided in this Act.

Graduates,
undergradu-
ates and assis-
tants serv-
ing under
articles.

(3) Such graduates, undergraduates, or assistants serving under articles may, during their respective engineering courses or terms of service, be recorded with the Association, and such graduates, undergraduates, or assistants serving under articles shall be subject to the control of the council as provided in this Act and to the by-laws of the Association, but shall not be members of the Association. 1922, c. 59, s. 16.

May be re-
corded, but
shall not be
members.

Licensing.

16.—(1) Any person not residing in the Province of Ontario who is a registered member of an association of engineers similarly constituted of any other province of the Dominion of Canada may upon application obtain from the registrar a license to practise as a professional engineer in the Province of Ontario upon production of evidence of his registry in such other province.

License to
practise.

(2) Any person who is not a resident of Canada, but who in the opinion of the members of council in any branch is recognized as a consulting specialist in such branch of engineering, and has had not less than ten years of experience in the practice of his profession, or who presents evidence to satisfy such members of council that he has equal qualifications

Non-resident
consulting
specialist.

with those required for registration in such branch of the profession, may, with the approval of the members of council of such branch, be granted a license to practise in that branch.

Resident of another province.

(3) Any professional engineer who is a resident of some other province of Canada in which there is no association of engineers similarly constituted may obtain a license to practise in a branch of engineering, subject to the approval of the members of council representing such branch.

Power to practise without license under what circumstances.

(4) In the event of any such person mentioned in this section being unable by reason of emergency or neglect on the part of the registrar, or for any other good and sufficient reason, to obtain such license within three months of his making application therefor, he shall be entitled to practise as a professional engineer in the province for such period of three months without holding such license. 1922, c. 59, s. 17.

Employee of public service corporation, etc.

17. Any person who is employed as a professional engineer by a public service corporation, public utilities or Government department, who is by reason of his employment required to practise as a professional engineer in provinces other than that of his residence, may so practise, in the Province of Ontario without holding a non-resident license or payment of fee, providing such person can on demand of the council produce credentials satisfactory to the council showing that he is a registered member of an association of engineers similarly constituted by some other province of Canada. 1922, c. 59, s. 18.

Membership.

Who may practise.

18.—(1) Only such persons who are members of the Association hereby incorporated, and registered as such under the provisions of this Act, or who have received a license from the council of the Association as hereinafter provided, shall be entitled within the Province of Ontario to take and use the title "Registered Professional Engineer," or any abbreviation thereof.

Seal.

(2) Each member of the association shall have a seal, the impression of which shall contain the name of the engineer and the words "Registered Professional Engineer" and "Province of Ontario," with which seal he shall stamp all official documents and plans, and the design of such seal shall be approved by the council. 1922, c. 59, s. 19.

Naval, military, and aerial services not affected.

19. The provisions of this Act shall not apply against any person while carrying on his duties in His Majesty's naval, military or aerial service. 1922, c. 59, s. 20.

Age limit. Members of overseas forces.

20. Engineers who were employed in professional engineering in the Province of Ontario, and who were accepted for overseas service in the war of 1914-1919, in the forces

of Great Britain or any of her allies, shall on their return to Canada be entitled to all the rights and privileges conferred under section 9. 1922, c. 59, s. 21.

21. Notwithstanding any other provision of this Act, no person shall be registered as a member of the Association until after he has attained the age of twenty-one years. 1922, c. 59, s. 22.

Partnership.

22.—(1) In the cases of two or more persons carrying on a practice as professional engineers in co-partnership, only such members who are registered or licensed under this Act shall individually assume the function of a professional engineer. Co-partnership.

(2) A firm or corporation of professional engineers shall not, as such, be deemed to be a member of the Association or be licensed to practise. 1922, c. 59, s. 23. Firm or corporation not to be deemed a member.

Examinations.

23. The council shall appoint annually a board of examiners for each branch of engineering from nominations made by members of council representing each of such branches. 1922, c. 59, s. 24. Board of examiners.

24.—(1) Examinations of candidates for registration or for license shall be held at least once per annum, at such place or places as the council may direct. Examinations.

(2) The scope of the examinations and the methods of procedure shall be prescribed for each branch by the members of council representing such branch, with special reference to the applicant's ability to design and supervise engineering works which shall insure the safety of life and property. Council to prescribe.

(3) The board shall examine all degrees, diplomas, certificates and other credentials presented or given in evidence for the purpose of obtaining registration or license to practise, if referred to them by the council, and may require the holder of such degree, diploma, certificate or other credentials to attest on oath, *viva voce* or by affidavit concerning the matter of his application. Board to examine degrees, diplomas, etc.

(4) The candidate shall submit to an examination before the board, or before such members of the board as may be deputed by the council to conduct such examination, on such branch or branches of professional engineering as the candidate may select. Candidate to submit to examination.

Result of examination to be filed with secretary.

(5) As soon as possible after the close of each examination the members of the board who shall have conducted such examination shall make and file with the secretary a certificate stating the result of such examinations, whereupon the council shall notify each candidate of the result of his examination and of their decision upon his application.

Failure.

(6) A candidate failing on examination may after an interval of not less than nine months be examined again.

Fees.

(7) The council shall from time to time prescribe the fees payable by candidates for examination, which fees shall be payable in advance by the candidates. 1922, c. 59, s. 25.

Central examining board.

25. The council shall have power to establish conjointly with any council of any association similarly constituted in one or more of the provinces of Canada a central examining board, and to delegate to such central examining board all or any of the powers possessed by the said council respecting the examinations of candidates for admission to practise, provided that any examination conducted by such central examining board shall be held in at least one place in Ontario. 1922, c. 59, s. 26.

Register and Registrar.

Certificate of membership.

26.—(1) The registrar shall issue a certificate of membership to each member admitted to the Association by the council, such certificate to be signed by the president or the vice-president and by the registrar, and it shall bear the seal of the Association, and shall also state the branch or branches of engineering in which the member was examined or otherwise accepted.

License to practise.

(2) The registrar shall issue a license to practise to any person entitled thereto, such license to specify the work upon which the holder of the license is to be employed and the period for which the same is issued, but in no case shall the period extend beyond the end of the calendar year in which such license was issued.

Names of licensees and members to be enrolled in register.

(3) The registrar shall enroll in the register provided by the council the names of all persons admitted to the association by the council, also the names of all persons licensed by the council. 1922, c. 59, s. 27.

Register to be correct.

27. The registrar shall keep the register correct and in accordance with the provisions of this Act and the instructions of the council. 1922, c. 59, s. 28.

Annual fee deemed a debt due.

28. The annual fee due from a member shall be deemed to be a debt due the Association and may be recoverable with the costs of same from such member in the name

of the council or of the Association in any court of competent jurisdiction. 1922, c. 59, s. 29.

29.—(1) If any member neglects or refuses to pay the annual fee for six months from the date upon which it became due after written notice from the secretary to the member's last known address on the register, the registrar shall cause the name of such member to be erased from the register, and such person shall thereupon cease to be a member, but such person shall at any time thereafter, upon payment of such fees as may be prescribed by the council, be entitled to reinstatement as a member. Neglect to pay annual fees.

(2) Any member may resign from membership in the Association upon giving written notice to the secretary and by payment of all dues in arrears, if any, whereupon the name of such member shall be erased from the register and such member shall be relieved of the liability for further annual dues, but such person shall at any time in the future be admitted as a member upon payment of the fees prescribed by the council. Resignation.

(3) Any member whose name has been erased from the register shall not be entitled to any of the rights and privileges conferred by the provisions of this Act until he has been re-admitted as a member. 1922, c. 59, s. 30. Where name erased from register.

30. In case the council should refuse to register any applicant for membership in the Association, or refuse to issue a license to practise to any applicant therefor, the person aggrieved shall have the right to apply to a judge of the Supreme Court of Ontario, who upon due cause shown may make an order directing the council to register the name of such person as a member of the Association, or to grant a license to practise, or make such other order as may be warranted by the facts, and the council shall forthwith comply with such order and such order when so made shall be final. 1922, c. 59, s. 31. Refusal to register.

31. The certificate of registration under the seal of the Association shall be *prima facie* evidence of registration. 1922, c. 59, s. 32. Evidence of registration.

Suspension or Expulsion.

32.—(1) The council may, in its discretion, reprimand or censure or suspend or expel any member guilty of unprofessional conduct, or of gross negligence or of continued breach of the by-laws of the Association, or any member convicted of a serious criminal offence by a court of competent jurisdiction. Suspension or expulsion for unprofessional conduct or gross negligence.

(2) The council shall not take any such action until after a complaint under oath has been filed with the secretary or the registrar, and a copy forwarded to the member accused, Procedure.

who shall be given an opportunity of submitting evidence in his defence, and the council shall not suspend nor expel a member without having previously summoned him to appear before the council, nor without having heard evidence under oath offered in support of the complaint and in behalf of the member accused.

Powers of
Council to
hear cases.

Rev. Stat.
c. 20.

(3) The council shall have the same powers as commissioners under *The Public Enquiries Act* to compel witnesses to appear and give evidence under oath in the manner and under penalties prescribed by such court, and all such evidence shall be taken in writing or by a duly qualified stenographer.

Appeal.

(4) Any member suspended or expelled may within sixty days after the order of suspension or expulsion appeal to a judge of the Supreme Court of Ontario from such order or resolution, giving not less than seven days' notice of such appeal to the secretary of the Association, and the practice and procedure in such an appeal shall be the same as upon an appeal from a master or referee.

Pending
appeal.

(5) Pending an appeal, the member suspended or expelled by council may continue to practise, but unless the order of suspension or of expulsion be set aside, the member so suspended or expelled shall not practise thereafter except upon the expiry of the period of suspension (in case of suspension). 1922, c. 59, s. 33.

Penalties.

Where un-
registered
or unlicensed
person
practises.

33. Any person in the Province of Ontario who, not being registered as a member of the Association in the Province of Ontario, or licensed by the Association,—

(a) uses verbally or otherwise the title of professional engineer, or makes use of any addition to or abbreviation of such title, or of any words, name or designation that will lead to the belief that he is a professional engineer or a member of the Association;

Penalty.

(b) advertises or holds himself out in any way or by any means as a member of the Association;

shall incur a penalty of not less than \$100 nor more than \$200 for the first offence, and of not less than \$200 nor more than \$500 for any subsequent offence. 1922, c. 59, s. 34.

Wilful falsi-
fication of
register.

34. If the registrar makes or causes to be made wilful falsification of the register, or in matters connected therewith, he shall incur a penalty of not less than \$100. 1922, c. 59, s. 35.

35. Any person who wilfully procures or attempts to procure for himself registration as member in the Association by making, producing or causing to be made or produced any fraudulent representation or declaration, either verbal or written, and any person knowingly aiding and assisting him therein, shall incur a penalty of not less than \$200. 1922, c. 59, s. 36.

36. Every penalty imposed by or under the authority of this Act, shall be recoverable under *The Summary Convictions Act*, and shall be paid over by the convicting magistrate to the Association. 1922, c. 59, s. 37.

37. No proceedings shall be commenced for any violation of the provisions of this Act after one year from the date of the committing of such violation. 1922, c. 59, s. 38.

Provisional Council.

38.—(1) The following persons are hereby constituted as a provisional council of the Association:—

President—Charles Hamilton Mitchell, of Toronto.

Vice-President—Robert Alexander Bryce, of Toronto.

Councillors—Representing branch of Civil Engineers—Willis Chipman, of Toronto; John Bow Challies, of Ottawa; Andrew Wellington Gray, of Westport.

Representing branch of Mechanical Engineers—Henry G. Acres, of Toronto; Harry Holborn Angus, of Toronto; Arthur Knowlton Spotton, of Galt.

Representing branch of Chemical Engineers—James Watson Bain, of Toronto; Stafford Frederick Kirkpatrick, of Ottawa; Harold Van der Linde, of Toronto.

Representing branch of Electrical Engineers—Henry U. Hart, of Hamilton; Frank Richard Ewart, of Toronto; Morris James McHenry, of Walkerville.

Representing branch of Mining Engineers—George Reginald Mickle, of Toronto; H. E. T. Haultain, of Toronto; James McEvoy, of Toronto;

all of whom shall hold office until their successors have been elected and appointed.

Vacancy.

(2) If a vacancy should occur in the provisional council it shall be filled by the Lieutenant-Governor in Council, who shall notify each member of the provisional council of such appointment. 1922, c. 59, s. 39.

Council to provide register.

39.—(1) The provisional council shall provide the register called for by this Act, and shall cause to be entered therein the names of all persons who are entitled to registration and who apply therefor.

Approval of Lieutenant-Governor to provisional by-laws.

(2) The provisional council shall, within four months from the passing of this Act, prepare provisional by-laws not inconsistent with the Act for the various purposes specified in section 3 of this Act, which shall not be valid until approved by the Lieutenant-Governor in Council.

Copy of register to be supplied to each member.

(3) The provisional council shall publish a copy of the register within five months from the passage of this Act, and shall mail one copy of such register to each member, and to any person who may apply for a copy, and the Lieutenant-Governor in Council shall also be furnished with a certified copy of the register and of the provisional by-laws.

General meeting.

(4) The provisional council shall call a general meeting of the members of the Association for the purpose of electing the members of council, for confirmation or revision of by-laws, and for organization purposes, and for such other purposes as specified in the notice calling the meeting, such general meetings to be held not later than seven months, nor earlier than five months after this Act comes into force. 1922, c. 59, s. 40.

CHAPTER 207.

The Stationary and Hoisting Engineers Act.

1. In this Act,—

Interpre-
tation.

- (a) “Board” shall mean the Board of Examiners appointed as hereinafter provided; “Board.”
- (b) “Gas plant” shall mean and include air, ammonia, carbon dioxide and sulphur dioxide compressor or compressors, driven by power other than steam, and every part thereof and thing connected therewith and used with reference to any such compressor or compressors; “Gas plant.”
- (c) “Hoisting plant” shall mean and include a steam boiler, a boiler and steam engine and every part thereof, working at a pressure of twenty pounds or over irrespective of horsepower and used for hoisting in structural operations or for excavating purposes, or for portable or industrial work; “Hoisting plant.”
- (d) “Horsepower” of a steam plant shall mean the equivalent to the evaporation of $34\frac{1}{2}$ lbs. of water per hour from and at 212° —15 sq. ft. heating surface for return tubular boilers—12 sq. ft. heating surface for locomotive type boilers—10 sq. ft. heating surface for water tube boilers; “Horsepower” of a steam plant.
- (e) “Horsepower” of a gas plant shall mean the brake horsepower rating of the motive power driving the compressor or compressors; “Horsepower” of a gas plant.
- (f) “Minister” shall mean Minister of Labour; “Minister.”
- (g) “Steam plant” shall mean and include a steam boiler or boilers, steam engine or engines, steam pump or pumps, or any combination of engines, boilers and pumps, and every part thereof and thing connected therewith, or used with reference to any such boilers, engines or pumps, in one building, or in two or more buildings, if said buildings are not separated by a distance of more than three hundred feet and under the one management. 1927, c. 55, s. 2. “Steam plant.”

Excep-
tions.

2. Nothing in this Act shall apply to the operation of any stationary steam or gas plant having a capacity of less than twenty-five horsepower, nor to steam heating plants or gas plants operating with the safety valve set to relieve the pressure at ten pounds or under, nor to the operation of a locomotive engine used on chartered railroads or electric locomotives, or a steamboat or steamship engine or a hoist at a mine, nor to boilers used for agricultural purposes. 1927, c. 55, s. 3.

Board of
Examiners.

3.—(1) The Lieutenant-Governor in Council may appoint a board of examiners consisting of three or five competent and independent engineers practically conversant with the construction of boilers and the operation of steam plants and gas plants, who shall hold office during pleasure and, subject to the regulations mentioned in the following section, shall prescribe the subjects in which candidates for certificates of qualification as stationary or hoisting engineers shall be examined and shall conduct or provide for and supervise the examination of candidates and report thereon to the Minister.

Staff
of Board.

(2) The Lieutenant-Governor in Council may appoint such examiners, officers, clerks and servants of the Board as may be deemed necessary. 1927, c. 55, s. 4.

Regula-
tions.

4. The Lieutenant-Governor in Council, upon the recommendation of the Minister, may make regulations for,—

- (a) the examination of candidates, the granting of certificates, the classifying of the holders of these certificates into their respective grades and the evidence to be furnished by candidates as to previous training or experience and sobriety and good character;
- (b) determining the time of duration of certificates and their renewal;
- (c) fixing the fees to be paid by candidates upon examination and for certificates and their renewal;
- (d) prescribing the causes for which a certificate may be revoked, cancelled, or suspended;
- (e) fixing the fees or other remuneration to be paid to the members and officers of the Board;
- (f) fixing the fees to be paid by plant owners for certificates of registration. 1927, c. 55, s. 5.

Qualification
of candidates.

5. A person shall not be eligible for examination unless he is a British subject, or has expressed his intention of becoming a Canadian citizen and has the necessary residence qualifications for becoming a Canadian citizen required by the Dominion *Naturalization Act* and has made application

to the proper authorities for naturalization papers. 1927, c. 55, s. 6.

6.—(1) On the recommendation of the Board, and on payment of the prescribed fees the Minister may issue certificates of qualifications to stationary or hoisting engineers, and certificates of registration to plant owners. Certificates of qualification.

(2) Subject to the regulations a certificate may be revoked, cancelled or suspended by the Minister on the recommendation of the Board at any time. Revocation or suspension.

(3) Every stationary or hoisting engineer shall, during the continuance of his certificate, register with the Board on or before the 1st day of February of each year on a form to be furnished by the Board, and any stationary or hoisting engineer who fails to do so shall not continue in charge of a steam or gas plant. Registration of holders of certificates.

(4) It shall be the duty of all owners of steam plants and gas plants to advise the Board, on a printed form, supplied by the Board on application, of the horsepower of the plant and pressure at which safety valves on boilers and tanks are set to relieve said pressure, on receipt of which, together with the prescribed fee, the Minister will issue a registration certificate. Any change made in the plant subsequent to registration will necessitate a re-registration of same. 1927, c. 55, s. 7. Particulars as to plants to be furnished by owners.

7. The duties of an engineer may be performed for a period not exceeding fourteen days by any person, providing the engineer, for reasons other than dismissal, absents himself from his post without having given seven days' notice; provided that at the end of such period an engineer with the proper qualifications is employed. 1927, c. 55, s. 8. Operating without certificates.

8. The Board at its discretion may grant a provisional certificate of corresponding horsepower to be good for a period not to exceed one year to any person who holds a stationary or hoisting engineer's certificate from the Board or other duly constituted authority of any other province of Canada. 1927, c. 55, s. 9. Provisional certificates.

9.—(1) The certificate of qualification shall at all times be exposed to view in the engine, compressor or boiler room in which the holder thereof is employed, except in the case of a hoisting plant when such certificate shall be carried upon the person of the operator. Engineer's certificate—when to be kept on view.

(2) The certificate of plant registration shall at all times be exposed to view in the engine, compressor or boiler room of the plant. Plant registration certificate to be exposed to view.

(3) Failure to comply with the provisions of subsections 1 and 2 of this section shall be *prima facie* evidence of the lack of qualification under this Act. 1927, c. 55, s. 10. Non compliance with subss. 1 and 2 evidence of lack of qualification.

Application
of Act to
other per-
sons than
engineers.

10. This Act shall not apply to firemen, who have had less than six months' experience, or other workmen acting under the personal direction or supervision of any engineer holding a certificate under this Act, who is actually in charge of a steam or gas plant, or to the employees of engine builders or steam or gas plant contractors engaged in installing, setting up or testing a boiler or steam or gas plant. This section shall not apply to hoisting engineers. 1927, c. 55, s. 11.

Appeal to
Minister
from Board.

11. Any person who deems himself aggrieved by the decision of the Board, may appeal therefrom to the Minister, upon giving such notice as the Minister may prescribe, and the decision of the Minister shall be final. 1927, c. 55, s. 12.

Annual
report of
Board.

12. The Board shall on or before the 15th day of November in every year make to the Minister a report in writing for the year ending on the 31st day of October of the previous year, showing,—

- (a) the number of certificates granted;
- (b) the number of applications for certificates refused and the causes for refusal;
- (c) the number of certificates revoked, cancelled or suspended, and the causes for the same;
- (d) the amount of fees received from candidates or holders of certificates;
- (e) the number of plants registered during the year;
- (f) the amount of fees received from plant owners for registration purposes;
- (g) such other matters as may be directed by the Minister or the Lieutenant-Governor in Council. 1927, c. 55, s. 13.

Right to enter
premises.

13.—(1) Any member of the Board or any inspector, on presentation of authority in writing, signed by the Minister, may enter any premises wherein he has reason to believe there is a steam, gas or hoisting plant and make such inspection as may be necessary to determine whether the provisions of this Act are being complied with.

Penalty for
interfering.

(2) Any person who interferes with or obstructs a member of the Board or inspector in the exercise of the powers conferred on him, shall incur a penalty not exceeding \$100.

Penalty for
impersonation.

(3) Any person impersonating another and presenting himself for examination under a false name, in order to obtain a certificate for a person other than himself, shall incur a penalty of not less than \$200. 1927, c. 55, s. 14.

14. Every person who,

Penalty for
operating
without
certificates.

- (a) except as provided in section 7, operates a steam, gas or hoisting plant as the engineer in charge thereof, or as fireman or oiler at a stationary steam or gas plant under an engineer, without the certificate required by this Act, or employs or permits any person to operate a steam, gas or hoisting plant as the engineer in charge or as fireman or oiler at a stationary steam or gas plant without such certificate; or

- (b) is guilty of a contravention of subsection 4 of section 6;

shall incur a penalty of not less than \$25. 1927, c. 55, s. 15.

15. It shall be the duty of the inspectors of factories to assist in the enforcement of this Act, to report to the Board any violation thereof and to furnish to the Board such information as they may have as to the conduct and capability of any person holding or applying for a certificate. 1927, c. 55, s. 16.

Duty of
factory
inspector.

16. The penalties provided by this Act shall be recoverable under *The Summary Convictions Act*, and all fees collected shall be remitted to the Chairman of the Board of Stationary and Hoisting Engineers, cheques being made payable to the Treasurer of Ontario. 1927, c. 55, s. 17.

Penalties
recoverable
under
Rev. Stat.
c. 121.

CHAPTER 208.

The Veterinary Science Practice Act.

Interpreta-
tion.

1. In this Act,—

“Minister.”

(a) “Minister” shall mean the Minister of Agriculture for the Province of Ontario;

“Veterinary
science.”

(b) “Veterinary Science” shall mean the application of medicine or surgery to the ailments of any kind of live stock except as regards parturition, castration, spaying and dehorning. 1920, c. 51, s. 2.

Certificate
required.

2. No person shall practise veterinary science for fees in Ontario without a certificate from the Minister entitling him so to do. 1920, c. 51, s. 3.

Board to
issue
certificates.

3. Such certificate shall be issued by the Minister upon the recommendation of a board of three members to be appointed by the Lieutenant-Governor in Council, and to be known as the “Veterinary Practice Board.” 1920, c. 51, s. 4.

Applica-
tions.

4. Application for certificates shall be made to the chairman of the Board, and it shall be the duty of the Board to carefully examine the evidences submitted as to the standing of each applicant for such certificate, and recommendations shall be made only in the cases of,—

Who may
receive
certificates.

(a) graduates in veterinary science of the Ontario Veterinary College or of the University of Toronto; or

(b) graduates in veterinary science of any veterinary college recognized by the Board as being at least equal in standing to the Ontario Veterinary College;

(c) persons who at the time of the passing of this Act are habitually engaged in the practice of veterinary science or any branch thereof for gain, and who have so habitually engaged in such practice for a period of at least five years prior to the passing of this Act. 1920, c. 51, s. 5.

Cancell-
ation of
certificates.

5. The Minister, upon the recommendation of the Board may cancel any certificate upon evidence that the holder thereof has been convicted in the courts of an indictable offence. 1920, c. 51, s. 6.

6. No person or persons, association, company or organization shall hereafter conduct in Ontario courses in veterinary science for which fees are charged and certificates or diplomas granted without a certificate of authorization from the Minister, and a certificate shall only be issued after investigation by the Board has shown that the requirements of admission and courses of study and instruction are at least equal in standard to that of the Ontario Veterinary College. 1920, c. 51, s. 7.

Conducting courses in veterinary science. Certificate required.

7. No person other than a graduate in veterinary science of a recognized college or university shall use the title "Veterinary Surgeon" or append to his name the term "Veterinary Surgeon" or any abbreviation thereof, and no graduate in veterinary science shall use any title or degree which has not been conferred on him by a recognized college or university. 1920, c. 51, s. 8.

Use of title "veterinary surgeon" restricted.

8. Any person holding a certificate from the Minister shall be entitled to \$4 per day when called as a witness in any court to give a professional opinion or in consequence of any professional service rendered by him. 1926, c. 21, s. 27.

Rights to professional fees.

9. Any person violating any provision of this Act, shall be guilty of an offence and shall incur a penalty of not more than \$100 nor less than \$50, to be recoverable under *The Summary Convictions Act*. 1920, c. 51, s. 10.

Penalty. Rev. Stat. c. 121.

CHAPTER 209.

The Cullers Act.

Interpreta-
tion.**1.** In this Act,—“Depart-
ment.”

(a) “Department” shall mean Department of Lands and Forests;

“Minister.”

(b) “Minister” shall mean Minister of Lands and Forests;

“Public
lands.”

(c) “Public lands” shall include Crown lands, school lands, clergy lands and patented lands where the timber on them remains the property of the Crown;

“Pulp-
wood.”

(d) “Pulpwood” shall include all timber suitable or intended for manufacturing pulp or paper;

“Sawlogs.”

(e) “Sawlogs” shall include logs of whatever length whether of round or flatted. 1924, c. 46, s. 2.

Regulations.

2.—(1) The Lieutenant-Governor in Council may appoint as many boards of examiners as he may deem necessary, each consisting of three skilled persons any two of whom shall form a quorum, whose duty shall be,—

(a) to examine, test and report upon the ability and knowledge of all applicants desiring to be licensed to cull and measure sawlogs cut on public lands;

(b) to examine, test and report upon the ability and knowledge of all applicants desiring to be licensed to cull and measure pulpwood cut on public lands;

(c) to perform such other duties as may be assigned to them by the Lieutenant-Governor in Council.

Minister
to set
standard.

(2) The Minister is hereby authorized to fix the standard and method of examination. 1924, c. 46, s. 3.

Oath of
examiner.**3.**—(1) Every examiner, before entering upon his duties, shall take and subscribe an oath to the following effect:

That I, _____, will act as Examiner of Cullers to the best of my ability and knowledge, and will conduct the examinations without fear, favour or affection and recommend for licenses only those persons who have satisfactorily proved their fitness to discharge the duties of culling and measuring sawlogs, or of culling and measuring pulpwood, as the case may be.

(2) The oath shall be transmitted to the Minister. 1924, c. 46, s. 4. Oath to be transmitted to Minister.

4. The Lieutenant-Governor in Council may authorize the payment to each member of such board, as remuneration for his services, of a sum not exceeding \$10 per day while actually employed as such examiner. 1924, c. 46, s. 5. Remuneration of examiners.

5. Every board shall sit at such places and on such dates as may be fixed by the Minister, and shall examine all candidates who present themselves before them, and at the close of the examination, or as soon after as may be, shall transmit to the Minister the names of such of the candidates as they believe are trustworthy and of good character, and who have passed a satisfactory examination, and whom they recommend as having the requisite skill and knowledge to warrant their being licensed as cullers, either of sawlogs or of pulpwood. 1924, c. 46, s. 6. Duties of board.

6.—(1) Every person intending to present himself for examination as a culler shall, on or before the 1st day of July in any year, give notice in writing to the Minister of such intention, and of his post office address. Application for examination.

(2) The notice referred to in the preceding subsection of this section shall state whether the candidate intends to present himself for examination as a culler of sawlogs or as a culler of pulpwood. Form of notice.

(3) The examination fee as culler either of sawlogs or pulpwood shall be \$4. Examination fee.

(4) Examination fees may be paid at the time of the notice mentioned in subsection 1 hereof or to the presiding examiner before the examination. Time of payment.

(5) Failure to comply with subsection 1 shall not render any applicant ineligible for examination privileges if reasons satisfactory to the Minister are furnished and other necessary requirements are met. 1924, c. 46, s. 7. Failure to comply with provisions as to application.

7.—(1) The Minister may issue a license to any person reported as competent to perform the duties of a culler, such license to be in the form following, and to remain in force until cancelled: Cullers' license.

To _____ of the County (or District) of _____

By virtue of authority vested in me by *The Cullers Act*, I hereby authorize you to act, during pleasure of the Crown, as culler of sawlogs (or of pulpwood as the case may be) cut on public lands within Ontario.

Given under my hand this _____ day of _____ 19 _____

Minister of Lands and Forests.

Effect
of license.

(2) A person to whom has been issued a license as culler of sawlogs shall be entitled thereunder to measure and cull pulpwood. 1924, c. 46, s. 8.

Oath of
applicant for
license.

8.—(1) Before a license is issued each successful applicant shall take an oath to the following effect:

That I, _____, while acting as a licensed culler, without fear, favour or affection, and to the best of my judgment and skill, will correctly measure all pulpwood (or sawlogs as the case may be) cut on public lands and which I may be employed to measure, and make true return of the same to the Department of Lands and Forests, or its agents.

Oath to be
transmitted
to Minister.

(2) The oath shall be transmitted to the Minister. 1924, c. 46, s. 9.

Special
permit.

9. No person other than a licensed culler, and no licensed culler as to timber other than that covered by his license, shall make measurements of sawlogs or pulpwood cut upon public lands for the purposes of a return to the Department, but where it is made to appear to the satisfaction of the Minister that the services of a licensed culler are not procurable, the Minister may issue a special permit to any trustworthy and skilled person to act as culler, and upon his taking the prescribed oath, but such permit shall not extend beyond the 1st day of June next following its date. 1924, c. 46, s. 10.

Duty of
culler.

10. It shall be the duty of every culler of sawlogs or of pulpwood as the case may be, to measure fairly and correctly to the best of his skill, knowledge and ability all sawlogs and pulpwood which he may be employed to measure, making only such deductions as are necessary to allow for rots or other defects, and to enter in a book of record, for the purpose of return to the Department, what he believes to be the proper contents of the logs and pulpwood, noting also the number of sawlogs and pulpwood respectively rejected as worthless, commonly called "culls." 1924, c. 46, s. 11.

How saw-
logs and
pulpwood to
be marked.

11. Upon all sawlogs and pulpwood culled or rejected as wholly worthless he shall mark the word "cull" in plain letters, but he shall not mark "cull" upon any log which is intended to be hauled to any river, lake or stream for the purpose of being driven to a mill. 1924, c. 46, s. 12.

Books and
records may
be inspected
by officers of
Department.

12. All licensed cullers shall submit their books and records of measurements for the inspection of any Crown timber agent, Crown timber ranger, or other officer of the Department when called upon so to do, and shall give all information asked for if in their power and furnish any statements or copies of statements which the Department or its agents may require. 1924, c. 46, s. 13.

13. At the end of the season every culler of sawlogs shall make a sworn return upon forms supplied by the Department or its agents, which shall show the names and addresses of each person for whom the sawlogs measured were cut, the lands on which the said sawlogs were cut, the number of pieces measured and accepted by him cut on each of said lands and the respective lengths and diameters of each of said pieces so cut and also the number of pieces so cut on each of said lands and rejected as worthless. 1924, c. 46, s. 14.

Returns to
be made by
cullers.

Names and
addresses.

14. At the end of the season every culler of pulpwood shall make a sworn return upon the forms supplied by the Department or its agents which shall show the number of cords of pulpwood measured by him, the names and addresses of each person for whom said pulpwood was cut respectively, the lands on which the said pulpwood was cut and the number of cords so cut on each of said lands, and also the quantity of pulpwood cut on each of said lands and rejected as worthless. 1924, c. 46, s. 15.

Returns to
be made by
cullers.

Number
of cords
measured.

15. If a culler neglects or refuses to carry out and obey the provisions of this Act, or any regulations made under it, the Minister may cancel his license and such culler shall not thereafter be eligible to cull or measure pulpwood or sawlogs cut upon public lands, and if he does so he shall incur a penalty of not less than \$10 nor more than \$50 for each offence. 1924, c. 46, s. 16, *part*.

Cancellation
of license.

16. If a culler wilfully undermeasures or mismeasures or improperly culls and rejects any sawlogs or pulpwood, or makes a false return for the purpose of deceiving or defrauding, his license shall be revoked and he shall not be permitted to act as culler under this Act, and in addition he shall incur a penalty of not less than \$20 nor more than \$100 for each offence. 1924, c. 46, s. 17, *part*.

Offences and
penalties.

17. This Act shall not abrogate any regulations made under *The Crown Timber Act*, except in so far as they may be inconsistent herewith. 1924, c. 46, s. 18.

Certain
provisions
not to be
abrogated.
Rev. Stat.
c. 38.

18. The penalties imposed by this Act shall be recoverable under *The Summary Convictions Act*. 1924, c. 46, ss. 16, 17, *part*.

Recovery of
penalties.
Rev. Stat.
c. 121.

CHAPTER 210.

The Innkeepers' Act.

Interpretation.

1. In this Act,

"Inn."

(a) "Inn" shall include an hotel, inn, tavern, public house or other place of refreshment, the keeper of which is by law responsible for the goods and property of his guests; and

"Innkeeper."

(b) "Innkeeper" shall mean the keeper of any such place. R.S.O. 1914, c. 173, s. 2.

Lien on baggage, etc., for accommodation, etc., furnished.

2.—(1) Every innkeeper, boarding-house keeper and lodging-house keeper shall have a lien on the baggage and property of his guest, boarder or lodger for the value or price of any food or accommodation furnished to him or on his account.

And power to sell.

(2) In addition to all other remedies provided by law he shall have the right, in case the same remains unpaid for three months, to sell by public auction the baggage and property of such guest, boarder or lodger, on giving one week's notice by advertisement in a newspaper published in the municipality in which the inn, boarding-house, or lodging-house is situate, or in case there is no newspaper published in the municipality, in a newspaper published nearest to such inn, boarding-house, or lodging-house, of the intended sale.

Notice of sale.

Particulars in notice.

(3) The advertisement shall state the name of the guest, boarder or lodger, the amount of his indebtedness, the time and place of sale, and the name of the auctioneer, and shall give a description of the baggage or other property to be sold.

Proceeds of sale, application of.

(4) The innkeeper, boarding-house keeper, or lodging-house keeper may apply the proceeds of the sale in payment of the amount due to him, and the costs of such advertising and sale, and shall pay over the surplus, if any, to the person entitled thereto on application being made by him therefor.

Lien on horses and carriages.

(5) Every keeper of a livery stable or a boarding stable shall have a lien on every horse or other animal boarded at or carriage left in such livery stable or boarding stable for his reasonable charges for boarding and caring for such horse, animal or carriage.

Lien on horses, etc., and power to sell.

(6) Where an innkeeper, boarding-house keeper, lodging-house keeper, livery stable keeper or boarding stable keeper has a lien upon a horse, other animal or carriage for the value

or price of any food or accommodation supplied, or for care or labour bestowed thereon, he shall, in addition to all other remedies provided by law, have the right, in case the same remains unpaid for two weeks, to sell by public auction such horse, animal or carriage on giving two weeks' notice by advertisement in a newspaper published in the municipality in which the inn, boarding-house, lodging-house, livery stable or boarding stable is situate, or, in case there is no newspaper published in the municipality, in a newspaper published nearest to such inn, boarding-house, lodging-house, livery stable or boarding stable of the intended sale.

(7) The advertisement shall state the name, if known, of Advertisement of intended sale. the person or persons who brought such horse, animal or carriage to the inn, boarding-house, lodging-house, livery stable or boarding stable, the amount of the indebtedness, and the name of the auctioneer, and shall give a description of the horse, animal or carriage.

(8) The innkeeper, boarding-house keeper, lodging-house keeper, livery stable keeper or boarding stable keeper may Proceeds of sale, application of. apply the proceeds of the sale in payment of the amount due to him, and the costs of such advertisement and sale, and shall pay over the surplus, if any, to the person entitled thereto on application being made by him therefor. R.S.O. 1914, c. 173, s. 3.

3.—(1) No innkeeper shall be liable to make good to any guest of such innkeeper any loss of or injury to goods or property brought to his inn, not being a horse or other live animal, or any gear appertaining thereto, or any carriage, to a greater amount than the sum of \$40 except,—

(a) where such goods or property have been stolen, lost, Except where default or neglect. or injured through the wilful act, default, or neglect of such innkeeper or any servant in his employ;

(b) where such goods or property have been deposited or unless deposited with him for safe keeping. expressly for safe custody with such innkeeper.

(2) In case of such deposit it shall be lawful for such innkeeper, if he thinks fit, to require, as a condition of his liability, that such goods or property shall be deposited in a box or other receptacle, fastened and sealed by the person depositing the same. R.S.O. 1914, c. 173, s. 4. Conditions of liability.

4. If an innkeeper refuses to receive for safe custody, as Consequences of failure to take charge of goods. mentioned in clause b of subsection 1 of the next preceding section, any goods or property of his guest, or if such guest, through any default of such innkeeper, is unable to deposit such goods or property the innkeeper shall not be entitled to the benefit of this Act in respect thereof. R.S.O. 1914, c. 173, s. 5.

Copy of section 3 to be conspicuously exhibited.

5. Every innkeeper shall cause to be kept conspicuously posted up in the office and public rooms and in every bedroom in his inn a copy of section 3 printed in plain type; and he shall be entitled to the benefit thereof in respect of such goods or property only as are brought to his inn while such copy is so posted up. R.S.O. 1914, c. 173, s. 6.

Limitation of lien on wearing apparel of servant or labourer to \$6.

6. The lien of an innkeeper or boarding-house keeper upon the wearing apparel of any servant or labourer shall not extend to any greater sum than \$6, and on payment or tender of that sum, or of any less sum due, such wearing apparel shall be immediately given up, whatever may be the amount due by such servant or labourer. R.S.O. 1914, c. 173, s. 7.

CHAPTER 211.

The Embalmers' and Undertakers' Act.

1. In this Act,Interpreta-
tion.

- (a) "Board" shall mean the board of examiners appointed under this Act; "Board."
- (b) "Embalming" shall mean the disinfection or preservation of the dead human body, entire or in part, by the use of chemical substances, fluids or gases, ordinarily used, prepared or intended for such purpose, either by outward application of such chemical substances, fluids or gases on the body, or by the introduction of the same into the body by vascular or hypodermic injection, or by direct application into the organs or cavities; "Embalming."
- (c) "Minister" shall mean the member of the Executive Council for the time being charged by the Lieutenant-Governor in Council with the administration of this Act; "Minister."
- (d) "Regulations" shall mean regulations made under the authority of this Act. R.S.O. 1914, c. 174, s. 2. "Regulations."

2. The Lieutenant-Governor in Council may appoint a board of examiners consisting of five persons practically conversant with the business of embalming who shall, subject to the regulations,

Board of
examiners.
Duties.

- (a) prescribe the subjects in which candidates for certificates of qualification as embalmers shall be examined;
- (b) conduct examinations of candidates or provide for and supervise the examinations of candidates for such certificates and report thereon to the Minister;
- (c) issue licenses and certificates of qualification to applicants therefor, who have passed such examinations or are otherwise entitled thereto. R.S.O. 1914, c. 174, s. 3.

3. Any three members of the board shall form a quorum. Quorum. R.S.O. 1914, c. 174, s. 4.

Secretary of
board of
examiners.

4.—(1) The board may appoint some person to be the secretary of the board.

Payment of
secretary.

(2) The secretary shall be paid such salary or other remuneration as may be fixed by the board out of the fees received by the board under this Act. 1914, c. 21, s. 35.

Register.

5. The secretary of the board shall keep a register in which shall be entered the name of every person to whom a certificate of qualification is granted under this Act, and the date at which the same is granted. R.S.O. 1914, c. 174, s. 6.

Regulations
by Lieuten-
ant-Gov-
ernor in
Council.

6. The Lieutenant-Governor in Council may from time to time make regulations,

- (a) for the examination of candidates for licenses and certificates of qualification and permits, the granting of such licenses, certificates and permits, and the evidence to be furnished by candidates as to sobriety and good character and as to previous training and experience;
- (b) for determining the time of continuance of such licenses and certificates and permits and renewal of same;
- (c) for fixing the fees to be paid by such candidates upon any such examination, or for any license or certificate of qualification or permit or renewal thereof;
- (d) for prescribing the causes for which any license, certificate or permit may be revoked, cancelled or suspended; R.S.O. 1914, c. 174, s. 7 (a-d);
- (e) for fixing the fees or other remuneration to be paid to the members of the board. R.S.O. 1914, c. 174, s. 7 (e); 1914, c. 21, s. 36.

Persons
carrying on
business
before 1st
July, 1911.

7. Every person engaged in or carrying on the business of embalming in Ontario at the time of the appointment of a board of examiners under this Act and who applies to the board for a certificate of qualification within one year thereafter, shall, upon furnishing such evidence of sobriety, good character and experience as the board may require, and upon payment of the prescribed fee, be entitled to receive a certificate of qualification from the board. R.S.O. 1914, c. 174, s. 8.

Appeal from
board to
Minister.

8. Any person who feels himself aggrieved by the decision of the board may appeal therefrom to the Minister upon giving such notice as the Minister may prescribe, and the decision of the Minister shall be final. R.S.O. 1914, c. 174, s. 9.

9. The board shall make a report to the Minister on or before the 31st day of December in every year, shewing, Annual report of board.

- (a) the number of certificates granted by them during the preceding year, and the persons to whom granted;
- (b) the number of applications for certificates refused during the preceding year and the causes for refusing the same;
- (c) the number of certificates revoked, cancelled or suspended during the preceding year;
- (d) the amount of fees received by them from candidates or owners of certificates during the preceding year;
- (e) the travelling and other expenses of the board and the secretary, and the fees, salary or other remuneration received by the board and the secretary; and
- (f) such other matters as may be directed by the Minister or the Lieutenant-Governor in Council.

R.S.O. 1914, c. 174, s. 10.

10. The receipts and expenditure of the board shall be audited by a chartered accountant, not a member of the board, and the fees, salary or other remuneration paid to the board shall be paid out of the fees received from candidates or others and shall in all cases be subject to the approval of the Minister. Audit of receipts and expenditure. R.S.O. 1914, c. 174, s. 11.

11. A certificate held by any person under this Act shall at all times be exposed to view in the place of business carried on by such person or in the place in which he is employed, and failure to keep such certificate so exposed shall be *prima facie* evidence of the lack of qualification under this Act. Certificate to be kept exposed to view. R.S.O. 1914, c. 174, s. 12.

12. Every person who, not being the holder of a certificate of qualification issued by the board or of a renewal thereof, holds himself out as an embalmer, or uses any sign or letters, or words or abbreviations, importing that he is an embalmer, shall incur a penalty not exceeding \$25. Penalty for professing to be licensed. R.S.O. 1914, c. 174, s. 13.

13.—(1) No person shall carry on business as an undertaker in Ontario without a license from the Department of Health which shall be issued upon such terms and subject to such conditions and regulations and upon payment of such fee and subject to cancellation or suspension for such cause as the Department of Health with the approval of the Lieutenant-Governor in Council may prescribe. License.

Penalty.

(2) Every person carrying on business as an undertaker without such license, shall incur a penalty of \$25. R.S.O. 1914, c. 174, s. 14.

Returns of
burials.

14.—(1) Every person who as an undertaker conducts or directs the burial of any human body shall forthwith, upon the form prescribed by the regulations of the Department of Health, notify the Department of such burial.

Penalty.

(2) Any person neglecting or refusing to carry out the provisions of this section shall incur a penalty of \$25, and upon conviction his license may be suspended or cancelled by the Department of Health. R.S.O. 1914, c. 174, s. 15.

Recovery of
penalties.
Rev. Stat.
c. 121.

15. The penalties imposed by this Act shall be recoverable under *The Summary Convictions Act*. R.S.O. 1914, c. 174, s. 16, *part*.

(NOTE.—*See The Coroners' Act, Rev. Stat. c. 123, for prohibition of embalming body where inquest may be held.*)

CHAPTER 212.

The Money-Lenders Act.

PART I.

PRELIMINARY.

1. In this Act:—

- (a) “Cost of the loan” shall mean the whole cost to the debtor of money lent and shall include interest, discount, subscription, premium, dues, bonus, commission, brokerage fees and charges, but not actual lawful and necessary disbursements made to a registrar of deeds, a master or local master of titles, a clerk of a county or district court, a sheriff or a treasurer of a municipality; Interpretation.
“Cost of the loan.”
- (b) “Court” shall mean a court having jurisdiction in an action for the recovery of a debt or money demand to the amount claimed by a creditor in respect of money lent; “Court.”
- (c) “Creditor” shall include the person advancing money lent and the assignee of any claim arising or security given in respect of money lent; “Creditor.”
- (d) “Debtor” shall mean and include a person to whom or on whose account money lent is advanced, and every surety and endorser or other person liable for the repayment of money lent or upon any agreement or collateral or other security given in respect thereof; “Debtor.”
- (e) “Money-lender” shall mean a person whose business is that of money-lending or who carries on that business in connection with any other business, whether the money lent is his own or that of any other person, or who advertises or holds himself out as or who by any notice or sign indicates that he is a money lender; “Money-lender.”
- (f) “Money lent” shall include money advanced on account of any person in any transaction which, whatever its form may be, is substantially one of money-lending or securing the repayment of money so advanced; “Money lent.”

"Registrar."

(g) "Registrar" shall mean the Registrar of Loan Corporations for Ontario. R.S.O. 1914, c. 175, s. 2.

Prosecutions.
Rev. Stat.
c. 121.

2. Every prosecution under this Act shall be taken under *The Summary Convictions Act* before a police magistrate or two justices of the peace. R.S.O. 1914, c. 175, s. 3.

PART II.

RELIEF AGAINST UNCONSCIONABLE TRANSACTIONS.

Jurisdiction
of courts.

Imp. Act,
63-64 Vict.
c. 51, s. 1.

Re-opening
account.

Re-opening
former settle-
ments.

Order for re-
payment of
excess.

Setting aside
or revising
contract.

How powers
of court may
be invoked.

In action by
creditor.

In action by
debtor.

In other pro-
ceedings.

3. Where, in respect of money lent, the court finds that having regard to the risk and to all the circumstances the cost of the loan is excessive and that the transaction is harsh and unconscionable the court may—

- (a) reopen the transaction and take an account between the creditor and the debtor;
- (b) notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, reopen any account already taken and relieve the debtor from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of the principal and the cost of the loan;
- (c) order the creditor to repay any such excess if the same has been paid or allowed on account by the debtor;
- (d) set aside either wholly or in part or revise or alter any security given or agreement made in respect of the money lent, and, if the creditor has parted with the security, order him to indemnify the debtor. R.S.O. 1914, c. 175, s. 4.

4. The powers conferred by section 3 may be exercised in—

- (a) an action or proceeding by a creditor for the recovery of money lent;
- (b) an action by the debtor notwithstanding any provision or agreement to the contrary, and notwithstanding that the time for repayment of the loan or any instalment thereof has not arrived;
- (c) an action or proceeding in which the amount due or to become due in respect of money lent is in question. R.S.O. 1914, c. 175, s. 5.

5. This Part shall apply in respect of money lent after the commencement of this Act, and to any agreement or security made or taken after the commencement of this Act in respect of money lent either before or after the commencement of this Act. R.S.O. 1914, c. 175, s. 6.

Application
of Part II.

6. Nothing in this Part shall affect the rights of a *bona fide* assignee or holder for value without notice, or derogate from the existing powers or jurisdiction of any court. R.S.O. 1914, c. 175, s. 7.

Saving
bona fide
holder for
value, and
existing
jurisdiction.

PART III.

MONEY-LENDERS.

7. This Part shall not apply to a—

Not to affect

- (a) pawnbroker in respect of business carried on by him in accordance with the provisions of *The Pawnbrokers' Act*;
- (b) corporation registered under *The Insurance Act* or *The Loan and Trust Corporations Act*;
- (c) chartered bank of Canada;
- (d) person carrying on any business, not having for its primary object the lending of money, in the course of which and for the purposes of which he lends money;
- (e) solicitor lending the money of a client and receiving for his services only solicitor's fees and disbursements, and a reasonable commission for procuring the investment, and who is not otherwise a party to the transaction or a sharer in the profits thereof, or liable to bear any loss arising therefrom; or
- (f) trustee, executor, guardian, committee or person acting in any other fiduciary capacity and lending money in his hands in that capacity, and receiving therefor only the remuneration fixed by the instrument creating the trust or appointing him, or by the order of a court, and who is not a sharer in the profits of the investment or liable to bear any loss arising therefrom. R.S.O. 1914, c. 175, s. 8.

Pawnbrokers.
Rev. Stat.
c. 213.

Insurance
and loan
corporations.
Rev. Stat.
cc. 222, 223.

Banks.

Persons
lending in-
cidentally in
their business.

Solicitors
investing
money for
clients.

Trustees,
etc.

Impl. Act,
63-64 V. c. 51,
s. 6.

8.—(1) Every money-lender before carrying on the business of money-lending shall register as a money-lender with the Registrar.

Registration
of money
lenders.

Register.

(2) The Registrar shall keep in his office a register to be called "The Money-Lenders' Register," in which he shall enter the name of every money-lender, the name under which the business of money-lending is to be carried on and the address, or all the addresses if more than one, at which it is carried on. R.S.O. 1914, c. 175, s. 9 (1, 2).

Expiry of registration.

(3) The registration shall expire on the 30th day of June in each year but may be renewed from year to year. 1925, c. 56, s. 2.

Head office and directors' residence.

9. No corporation shall be registered as a money-lender unless its head office is in Ontario and the directors or the members of the governing body thereof, by whatever name known, reside in Ontario. R.S.O. 1914, c. 175, s. 10.

Prohibitions.

10. No person shall,

Carrying on business without registry.

(a) carry on business as a money-lender without being registered;

Or otherwise than as registered.

(b) carry on such business otherwise than in his registered name, or in more than one name, or elsewhere than at his registered address;

Or transacting business in other than registered name.

(c) enter into any agreement in the course of his business as a money-lender with respect to the advance of money lent, or take any security for money lent in the course of such business otherwise than in his registered name;

Or failing to furnish copy of document.

(d) on reasonable request, and tender of a reasonable sum for expenses, fail to furnish a debtor for money lent with a copy of any document relating to the transaction. R.S.O. 1914, c. 175, s. 11, *part*.

Imp. Act, 63-64 V. c. 51, s. 2.

Penalty.

11.—(1) Every person who violates the provisions of section 10 shall incur a penalty not exceeding \$200, and on conviction for a second or any subsequent offence shall be liable to imprisonment for a period not exceeding six months, or, in the case of a corporation, shall incur a penalty not exceeding \$1,000.

Consent of Attorney-General.

(2) No prosecution for an offence under this section shall be commenced without the consent of the Attorney General or the Crown attorney for the county or district in which the offence is committed. R.S.O. 1914, c. 175, s. 12.

Fraudulent statements or concealment by money lenders.

12.—(1) Every money-lender and every manager, agent or clerk of a money-lender, and every director, manager or other officer of a corporation carrying on the business of a money-lender, who by any false, misleading or deceptive statement, representation or promise, or by any dishonest conceal-

ment of material facts, fraudulently induces or attempts to induce any person to borrow money or to be responsible for the repayment thereof, or to agree to the terms of any transaction with respect to money lent, shall incur a penalty not exceeding \$500.

Imp. Act,
63-64 V.
c. 51, s. 4.

(2) The Lieutenant-Governor in Council may direct the cancellation or suspension of the registration of any person convicted of an offence under subsection 1. R.S.O. 1914, c. 175, s. 13.

Cancellation
or suspension
of registra-
tion.

13. In every prosecution under this Part the burden of proof of registration shall be upon the person charged. R.S.O. 1914, c. 175, s. 14.

Burden of
proof of
registration.

14. The Lieutenant-Governor in Council may make such regulations as he may deem expedient respecting the mode of registration, the fee to be paid thereon, and the inspection of the register and the fees payable therefor, and generally for better carrying out the provisions of this Part. R.S.O. 1914, c. 175, s. 15.

Regulations.

CHAPTER 213.

The Pawnbrokers' Act.

INTERPRETATION.

Interpreta-
tion.**1.**—(1) In this Act,"Municipi-
pality."

(a) "Municipality" shall not include county;

"Pawn-
broker."

(b) "Pawnbroker," shall mean a person who exercises the trade of receiving or taking by way of pawn or pledge any goods for the repayment of money lent thereon;

"Pawner."

(c) "Pawner," shall mean a person delivering an article for pawn to a pawnbroker;

"Pawn
ticket."

(d) "Pawn ticket," shall mean the note or memorandum referred to in section 8.

"Pledge."

(e) "Pledge," shall mean an article pawned with a pawnbroker;

"Shop."

(f) "Shop," shall include dwelling-house and warehouse or other place of business of place where business is transacted.

Who to be
deemed
pawnbrokers.

(2) In order to prevent evasion of the provisions of this Act every person shall be deemed to be a pawnbroker who

35 and 36 V.
Imp. c. 93,
s. 6.

(a) keeps a shop for the purchase or sale of goods or chattels, or for taking in goods or chattels by way of security for money advanced thereon; or

(b) purchases or receives or takes in goods or chattels and pays or advances or lends thereon any sum of money not exceeding \$50,

with or under an agreement or understanding expressed or implied or to be from the nature and character of the dealing reasonably inferred that those goods or chattels may be afterwards redeemed or repurchased on any terms, and every such transaction, payment, advance and loan shall be deemed a pawning, pledging and loan respectively under this Act. R.S.O. 1914, c. 176, s. 2.

LICENSE.

2.—(1) No person shall exercise the trade of a pawnbroker unless he obtains a license therefor under the hand of the treasurer of the municipality in which he carries on or purposes to carry on such trade, nor unless he obtains a renewal of the same annually, but no license shall be issued or renewed, unless under the authority of a by-law of the council of the municipality. Licenses.

(2) A license or renewal may be refused without any cause assigned. Refusal to grant or renew.

(3) The sum of \$60 shall be paid for every license or renewal thereof to the treasurer, for the use of the municipality, and every pawnbroker shall give to the municipality security to the satisfaction of the treasurer thereof in the sum of \$1,000, for the due observance by him of the provisions of this Act. Fee for license.

(4) Every person exercising such trade without having obtained a license or renewal thereof shall incur a penalty of \$50 for every pledge he takes. R.S.O. 1914, c. 176, s. 3. Penalty for neglect to take out license.

3. No person shall, by virtue of one license, keep more than one shop. R.S.O. 1914, c. 176, s. 4. License to cover only one shop.

4. Only one license shall be necessary where two or more persons carry on trade as pawnbrokers in partnership in the same shop. R.S.O. 1914, c. 176, s. 5. License to partners.

5. For the purposes of this Act anything done or omitted by the servant, apprentice or agent of a pawnbroker in the course of or in relation to the business of a pawnbroker shall be deemed to be done or omitted, as the case may be, by the pawnbroker; and any thing by this Act authorized to be done by a pawnbroker may be done by his servant, apprentice or agent. R.S.O. 1914, c. 176, s. 6. Agents, servants and apprentices of pawnbrokers. 25 & 26 Vict. Imp. c. 93, s. 8.

DUTIES OF PAWNBROKER.

6.—(1) Every pawnbroker shall always

(a) keep exhibited in large, legible characters on a sign over the outer door of his shop his name and the word "Pawnbroker"; and Sign to be kept up by pawnbroker.

(b) keep displayed in a conspicuous part of his shop a notice painted or printed in English in large, legible characters so as to be visible to any person pawning or redeeming pledges, showing the rate of profit authorized by law to be taken, and also the various prices of the pawntickets to be given according to the rates hereinafter mentioned, and Notice of rates allowed.

of the expense of obtaining a copy of the pawn-ticket where the pawn-ticket has been lost, mislaid, destroyed or fraudulently obtained from the pawnner.

Penalty for non-compliance.

(2) If a pawnbroker fails in any respect to comply with the requirements of this section he shall incur a penalty not exceeding \$40. R.S.O. 1914, c. 176, s. 7.

Entries to be made by pawnbrokers.

7.—(1) Every pawnbroker who takes a pledge in pawn whereon a sum exceeding \$1 is lent shall, before he lends the money thereon, enter in English in a fair and legible manner in a book to be kept by him for that purpose a description of the pledge, the sum lent thereon, with the day of the month and year, and the name and a description of the pawnner, and the name of the street and number of the house where he resides, and whether he is a lodger in or the keeper of such house, by using the letter "L" if a lodger, and the letter "H" if a housekeeper, and also the name and place of abode of the owner according to the information of the pawnner, into all which circumstances the pawnbroker shall inquire of him before any money is lent.

If sum does not exceed \$1.

(2) If the sum lent does not exceed \$1, a similar entry shall be made in such book within four hours after the goods have been pawned.

Separate book for pledges over \$2.

(3) Where more than \$2 is lent upon a pledge the entries shall be made in respect thereof in a separate book to be kept for that purpose.

Entries, how to be made.

(4) The entries shall be numbered in the books consecutively in the order in which the pledges are pawned in the following manner, viz.: the first pledge received in pawn as No. 1, the second as No. 2, and so on until the end of the month, and in like manner in every succeeding month, and upon every pawnticket respecting such pledge, shall be written the number of entry of the pledge so entered in the book. R.S.O. 1914, c. 176, s. 8.

Note or memorandum (ticket) for the pawnner.

8. At the time of taking any pledge a note or memorandum, written or printed, shall be given to the pawnner containing a description of the pledge and a statement of the sum lent thereon, with the day of the month and year, and the name of the pawnner and the name of the street, number of the house where he resides, and whether he is a lodger in or the keeper of such house, by using the letters "L" or "H," and upon such note or memorandum, or on the back thereof, shall be written or printed the name and place of abode of the pawnbroker and the rates of interest which may lawfully be charged, which note or memorandum the pawnner is required to take, and unless he takes the same the pawnbroker shall not take the pledge in pawn. R.S.O. 1914, c. 176, s. 9.

9.—(1) When the sum lent is less than \$20 the pawnbroker may take five cents for the pawnticket. Charges for ticket if less than \$20.

(2) When the sum lent is \$20 or more he may take ten cents. If more. R.S.O. 1914, c. 176, s. 10.

10. Except as hereinafter provided the pawnbroker shall not be bound to re-deliver the goods unless and until the pawnticket is produced and delivered to him. The ticket to be afterwards produced. R.S.O. 1914, c. 176, s. 11.

11. A duplicate of the pawnticket shall be affixed to the pledge, and, where the pledge is redeemed, the pawnbroker shall write or endorse on the duplicate the profit taken by him for the pledge, and shall keep the duplicate in his custody for one year after redemption. Duplicate ticket. R.S.O. 1914, c. 176, s. 12.

UNLAWFUL PAWNING.

12.—(1) Any person who knowingly and designedly pawns anything being the property of another person, unless employed or authorized by the owner so to do, shall incur a penalty of not less than \$4 nor more than \$20, and a further penalty of a sum equal to the full value of the pledge as ascertained by the convicting justice. Penalty for pawning goods of others.

(2) The penalties shall be applied towards making satisfaction to the person injured, and defraying the costs of the prosecution, as may be adjudged reasonable by the convicting justice. Penalties, how applied. R.S.O. 1914, c. 176, s. 13.

13. A pawnbroker who knowingly takes in pawn any linen or wearing apparel, or unfinished goods, or materials entrusted to any person to wash, scour, iron, mend, manufacture, work up, finish or make up, shall be guilty of an offence against this Act and shall incur a penalty not exceeding double the amount of the loan, and shall forthwith restore the pledge to the lawful owner in the presence of the convicting justice or as may be directed by him. Consequences of taking linen, wearing apparel, unfinished goods, etc. R.S.O. 1914, c. 176, s. 14. Imp. Act 35-36 V., c. 32, s. 35.

14.—(1) If the pawnbroker, on request by a constable authorized by a search warrant issued under the authority of *The Summary Convictions Act* to search the shop, refuses to open the shop and permit it to be searched the constable may break it open and search as he may think fit therein for such goods or articles doing no wilful damage, and any pawnbroker or other person who opposes or hinders the search shall incur a penalty not exceeding \$100. Search warrant. Rev. Stat. c. 121. Imp. Act 35-36 V., c. 93, s. 36, part. Penalty.

(2) If in the search any of the goods in respect of which the warrant was issued are found and the property of the owner in the same is proved to the satisfaction of the justice he shall cause the same to be forthwith restored to the owner. Restoration of goods found on search. R.S.O. 1914, c. 176, s. 15. Imp. Act 35-36 V., c. 93, s. 36, part.

[As to search warrants see *The Summary Convictions Act*, Rev. Stat. c. 121.]

REPORTS TO POLICE.

Daily report
to police.

15.—(1) Every pawnbroker shall before ten o'clock in the forenoon of every business day report to the chief constable or to such other person as may be designated by by-law of the council of the municipality, on forms to be furnished by the corporation thereof, a description of all pledges received by him in pawn on the next preceding business day together with the numbers of the pawntickets issued therefor and the amounts loaned.

Penalty.

(2) Every person contravening this section shall incur a penalty not exceeding \$40. R.S.O. 1914, c. 176, s. 16.

Inspection
by police.

16. The chief constable or an officer authorized in writing by him or by the police magistrate, or any member of the Ontario Provincial or Dominion police force may at all times inspect a pawnbroker's book and shall have access to all books and papers and all pledges and when engaged in such inspection may take with him such other persons as he may deem advisable. R.S.O. 1914, c. 176, s. 17.

GOLD AND SILVER NOT TO BE MELTED.

Gold and
silver not to
be melted.

17. Gold or silver which has been pawned shall not be melted by a pawnbroker unless specially authorized by the council of the municipality. R.S.O. 1914, c. 176, s. 18.

RIGHT OF HOLDER OF PAWNTICKET.

Rights of
holder of
ticket.

35-36 Vict.
(Imp.), c. 93,
s. 25.

18. The holder for the time being of a pawnticket shall, as between the pawner and the pawnbroker, be presumed to be the person entitled to redeem the pledge, and, subject to the provisions of this Act, the pawnbroker shall accordingly, on payment of the loan and profit, deliver the pledge to the person producing the pawnticket. R.S.O. 1914, c. 176, s. 19.

PLEDGE DESTROYED OR DAMAGED BY FIRE.

Liability of
pawnbroker
in case of
fire.

Imp. Act
35-36 V..
c. 93, s. 27.

19.—(1) Where a pledge is destroyed or damaged by or in consequence of fire the pawnbroker shall nevertheless be liable, on application within the period during which the pledge would have been redeemable, to pay the value of the pledge after deducting the amount of the loan and profit, such value to be the amount of the loan and profit and twenty-five per centum on the amount of the loan.

Insurable
interest of
pawnbroker.

(2) A pawnbroker shall have an insurable interest in the pledge to the extent of the value so estimated. R.S.O. 1914, c. 176, s. 20.

REDEMPTION OF PLEDGES.

20.—(1) If within one year after a pledge has been pawned exclusive of the day on which it was pawned the pawner or other person on his behalf, tenders to the pawnbroker the pawnticket and also the principal money borrowed and the profit according to the lawful rates, and the person who took the pledge neglects or refuses, without reasonable cause, to deliver back the goods so pawned the pawner may make oath thereof before a justice of the peace, who shall summon such person before him, and shall examine on oath the parties and their witnesses touching the premises.

Time for redemption.

Rights of pawner.

(2) If tender of the pawnticket with the principal sum lent, and lawful profit thereon, is proved to have been made within such time, then on payment by the pawner of the principal money and the lawful profit due thereon, or, if the pawnbroker refuses to accept thereof on tender before the justice, the justice shall, by order under his hand, direct the pledge to be forthwith delivered to the pawner, or, if it has been sold, embezzled, lost, mislaid or destroyed, shall direct the pawnbroker to make satisfaction for the value thereof to be fixed by the justice, subject to the provisions of section 19, and if the pawnbroker neglects or refuses to deliver up the pledge or to make satisfaction for the value thereof the justice shall commit him to the common gaol for a period not exceeding three months or until he delivers up the pledge, or makes satisfaction for the value thereof pursuant to the order. R.S.O. 1914, c. 176, s. 21.

Tender, and consequences of refusal.

21. If a person entitled and offering to redeem a pledge shows to the satisfaction of a justice of the peace that the pledge has become or has been rendered of less value than it was at the time of the pawning thereof by or through the default, neglect or wilful misbehaviour of the pawnbroker the justice may award a reasonable satisfaction to the owner of the pledge in respect of the damage, and the amount awarded shall be deducted from the amount payable to the pawnbroker, or shall be paid by the pawnbroker, as the case requires, in such manner as the justice directs, and in case of default the pawnbroker shall be liable to the punishment mentioned in section 20. R.S.O. 1914, c. 176, s. 22.

Compensation for depreciation of pledge.

Imp. Act 35-36 V., c. 93, s. 28.

22. The provisions of this section shall have effect for the protection of persons entitled to redeem a pledge and pawners not having their pawntickets to produce.

Protection of owners and persons not having pawntickets.

(a) Any person claiming to be entitled to redeem a pledge, but not holding the pawnticket, may apply to the pawnbroker for a copy of the pawnticket and a printed form of affidavit which the pawnbroker shall deliver to him;

35 and 36 Vict., c. 93, s. 29 (Imp.).

- (b) If the claimant proves to the satisfaction of a justice of the peace his right to redeem the pledge and on or before the third day after the day on which the form of affidavit is delivered to him by the pawnbroker, exclusive of days on which the pawnbroker is prohibited from carrying on business, delivers back to the pawnbroker the affidavit duly sworn endorsed with a certificate of the justice that such proof has been made, the claimant shall have, as between him and the pawnbroker, all the rights and remedies which he would have had if he had produced his pawnticket;
- (c) The pawnbroker shall not be bound to deliver the pledge to any person until the expiration of such three days;
- (d) The pawnbroker shall be indemnified for delivering the pledge, or otherwise acting in conformity with the affidavit and certificate, unless he has notice that the affidavit is fraudulent or false in any material particular;
- (e) If the money lent is under \$20 the pawnbroker may take for the copy and affidavit five cents, or if it is \$20 or more he may take ten cents. R.S.O. 1914, c. 176, s. 23.

[As to lawful rates see *R. S. C. Cap. 121, secs. 3, 4.*]

Pledges for
\$2 or less
not redeemed
in time
forfeited.
Imp. Act
35 and 36 V.,
c. 93, s. 17.

23.—(1) A pledge pawned for \$2 or less if not redeemed within the year of redemption shall, at the end thereof, become and be the pawnbroker's absolute property.

Pledges over
\$2 redeemable
until sold.
Imp. Act
35 and 36 V.,
c. 93, s. 18.

(2) A pledge pawned for more than \$2 shall continue redeemable until it is disposed of, as in this Act provided, although the year of redemption has expired. R.S.O. 1914, c. 176, s. 24.

SALE OF PLEDGES.

When to be
at public
auction.

24.—(1) When the sum lent exceeds \$2 the pledge shall be sold at public auction and not otherwise.

Exposition
of goods and
advertisement.

(2) Before such sale the articles pawned shall be exposed to public view, and an advertisement thereof containing the name and place of abode of the pawnbroker, a description of the articles separately, the month the pledge was received in pawn and the number of the pledge shall be published on two separate days in a public newspaper published in the municipality and the second advertisement shall be published at least two clear days before the first day of sale.

Penalty for
not properly
describing.

(3) If the articles are not described separately in the advertisement the pawnbroker shall incur a penalty payable

to the owner of the pledge of not less than \$8 nor more than \$40.

(4) A pawnbroker may bid for and purchase at a sale by auction made or purporting to be made under this Act a pledge pawned with him, and on such purchase he shall be deemed the absolute owner of the pledge purchased.

Bidding by pawnbroker.

Imp. Act 35 and 36 v., c. 93, s. 19, part.

(5) Where a pawnbroker bids at a sale the auctioneer shall not take the bidding in any other form than that in which he takes the biddings of other persons at the same sale, and the auctioneer on knocking down any article to a pawnbroker shall forthwith declare audibly the name of the pawnbroker as purchaser.

How to be taken. Idem. Sched. 5 (7).

(6) The pawnbroker shall enter in a book to be kept for that purpose a just account of the sale, showing therein the day of the month on which the articles were pledged, the name of the pawner, the day when, and the money for which each article pledged was sold, and the name and abode of the auctioneer.

Account of sales to be kept and booked.

(7) If the pledge is sold for more than was due thereon, the overplus, after deducting the necessary costs and charges of the sale and advertisement, shall be paid to the pawner by whom or upon whose account the pledge was pawned.

Disposal of surplus.

(8) The pawner or the person for whom the pledge was pawned or his executor, administrator or assignee shall have the right to inspect the entry made of the sale on paying five cents for the inspection.

Pawner may inspect entries.

(9) If the pawnbroker refuses to permit the pawner or the person for whom the pledge was pawned or his executor, administrator or assignee, upon the production of the probate or letters of administration or the assignment, to inspect such entry, or if the pledge was sold for more than the sum entered in such book, or if the pawnbroker did not make such entry, or did not in good faith sell the pledge according to the provisions of this Act, or refuses to pay the overplus on demand, in addition to any other liability, he shall incur a penalty of not less than \$40 or more than \$100, and the convicting justice may award the whole or any part of the penalty to the person aggrieved. R.S.O. 1914, c. 176, s. 25.

Consequence of refusal to permit inspection.

RESTRICTIONS UPON PAWNBROKERS.

25.—(1) A pawnbroker shall not—

(a) purchase any article or receive or take any pledge in pawn from any person who appears to be under the age of fifteen years, or to be intoxicated; or

(b) purchase or take in pawn a pawnticket issued by any other pawnbroker; or

Restrictions upon pawnbrokers.

- (c) employ or permit any servant or other person under sixteen years of age to take pledges in pawn; or
- (d) carry on business of a pawnbroker on Sunday, Good Friday, Christmas Day or any day appointed by the Governor-General or the Lieutenant-Governor for a general fast or thanksgiving, or on any other day before eight o'clock in the morning or after eight o'clock in the evening, except on Saturday evening and the evenings preceeding Good Friday and Christmas Day, on which evenings he may keep his shop open until ten o'clock; or
- (e) under any pretence purchase, except at public auction, any pledge while in pawn with him; or
- (f) suffer any pledge while in pawn with him to be redeemed with a view to his purchasing it; or
- (g) make any contract or agreement with any person pawning or offering to pawn any article, or with the owner thereof for the purchase, sale or disposition thereof, within the time of redemption; or
- (h) sell or otherwise dispose of any pledge pawned with him except at such time and in such manner as is authorized by this Act.

Imp. Act
35-36 V.,
c. 93, s. 32.

Penalty.

(2) For any contravention of this section a pawnbroker shall incur a penalty of not less than \$20 or more than \$40. R.S.O. 1914, c. 176, s. 26.

Pawnbroker
bound to
produce
pawn-books,
etc.

26. When the justice is of the opinion that the production of any pawnbook, voucher, pawnticket or other document, which is or ought to be in the hands, custody or power of a pawnbroker is necessary he shall summon him to attend with it, and the pawnbroker shall be bound to produce it in the state in which it was when the pledge was pawned, and if he neglects or refuses to attend or to produce it in its true and perfect state he shall, unless he shows good cause to the satisfaction of the justice, incur a penalty of not less than \$20 nor more than \$40. R.S.O. 1914, c. 176, s. 27.

No fee on
justice's
summons or
warrant.

27. No fee shall be taken by a justice of the peace for any summons or warrant granted by him under this Act, so far as the same relates to a pledge. R.S.O. 1914, c. 176, s. 28.

PENALTIES.

Application
of penalties.

28. Unless where otherwise provided all penalties recovered under this Act shall belong to the municipality in which the offence was committed and be paid over to the treasurer thereof. R.S.O. 1914, c. 176, s. 29.

29. The penalties imposed by this Act shall be recoverable under *The Summary Convictions Act*, but an information may be laid for any offence against this Act within twelve months next after the offence was committed. R.S.O. 1914, c. 176, s. 30.

Recovery
of penalties.
Rev. Stat.
c. 121.
Limitation
of prosecu-
tions.

PERSONAL REPRESENTATIVE OF PAWNBROKER.

30. The provisions of this Act shall extend to the executor and administrator of a deceased pawnbroker, but he shall not be answerable for any penalty personally or out of his own estate unless the same was incurred by reason of his own act or neglect. R.S.O. 1914, c. 176, s. 31.

Act to extend
to executors,
administra-
tors, etc.

CHAPTER 214.

The Private Detectives Act.

License
required.

1. No person shall engage in the business of a private detective, industrial service agency or an investigator, for hire or reward, or advertise or indicate in any letter, document or paper that he is engaged in any such business without having first obtained from the Treasurer of Ontario a license so to do as hereinafter provided. 1926, c. 47, s. 2.

License to
information
bureau or
agency.

2. No person shall engage in the business of furnishing or supplying for hire or reward, information as to the personal character of any person or as to the character or kind of business or occupation of any person or own or conduct or maintain a bureau or agency for any of the above-mentioned purposes without first having obtained from the Treasurer of Ontario as hereinafter provided a license so to do for each bureau or agency and for each and every sub-agency, office and branch office, owned, conducted or maintained by such person for the conduct of such business. 1926, c. 47, s. 3.

Exception
as to mer-
cantile
agencies.

3. Nothing in the two next preceding sections shall apply to or affect any person carrying on a business or agency for the purpose of supplying information to subscribers as to the financial rating of persons or firms. 1926, c. 47, s. 4.

Application.

Security.

4. Any person desiring the license in sections 1 and 2 of this Act mentioned shall apply in writing (Form 1) to the Treasurer of Ontario and shall enter into a bond, approved by the Treasurer, with two sufficient sureties or executed by a guarantee company, in the sum of \$3,000 for the faithful, honest and lawful conduct of such business by such applicant. 1926, c. 47, s. 5.

Issue
of license.

5. The Treasurer of Ontario, upon such application and upon such further inquiry and investigation as he may deem proper of the character and competency of the applicant and upon approving the bond in section 4 mentioned and upon receiving from the applicant the fee of \$300 may issue and deliver to such applicant a license (Form 2) to conduct such business for the term of one year from the date thereof, and such license may be renewed annually on a further payment of \$300 per annum, but shall be revocable at any time by the Treasurer for cause. 1926, c. 47, s. 6.

6. Immediately upon the receipt of the license the licensee named therein shall cause such license to be posted up and at all times displayed in a conspicuous place in the bureau, agency, sub-agency, office or branch for which it is issued. 1926, c. 47, s. 7.

License to be posted up in office.

7. In case of removal of the bureau, agency, sub-agency, office or branch of a licensee to a place other than that described in the license, he shall, within twenty-four hours immediately following such removal, give written notice of such removal to the Treasurer of Ontario, which notice shall describe the premises to which removal is made. 1926, c. 47, s. 8.

Notice of removal of office, etc.

8. Every corporation licensed under this Act shall make and file with the Provincial Secretary annually on or before the 8th day of February in each year, a summary statement containing the like particulars and information and verified in the like manner as required in the case of a corporation to which section 138 of *The Companies Act* applies, and in default shall incur the same penalties provided in cases of default in compliance with the said section and no renewal license shall be issued until the statement has been filed. 1926, c. 47, s. 9.

Returns to be made by licensees.

Rev. Stat. c. 218.

9. A license shall not be required by an employee of a duly licensed private detective but every licensed private detective shall be responsible for the conduct of his employees. 1926, c. 47, s. 10.

Saving as to employees of detectives.

10. Every licensee shall keep a record of all operatives employed by him which record shall be open for inspection at all times by the Commissioner of the Ontario Provincial Police. 1926, c. 47, s. 11.

Records as to employees of licensee.

11. A person while holding the position of a provincial or county constable shall not do any of the things for which a license is required by sections 1 and 2 of this Act. 1926, c. 47, s. 12.

Provincial or county constables not to act as detectives.

12. This Act shall not apply to barristers, solicitors or their employees in the regular practice of their profession. 1926, c. 47, s. 13.

Saving as to legal profession.

13. A person who is or has been a licensee under this Act or the employee of a licensee shall not divulge to anyone other than his employer or as his employer may direct, except as he may be required by law, any information acquired by him during such employment in respect of any of the work to which he shall have been assigned by his employer. 1926, c. 47, s. 14.

Information acquired to be confidential.

Licensees
not to be
collectors.

14. A licensee under this Act shall not act as a collector of accounts, or undertake, or hold himself, or advertise as undertaking to collect accounts for any person either with or without remuneration. 1926, c. 47, s. 15.

Penalty.

15. Any person doing anything in contravention of this Act shall upon summary conviction thereof incur a penalty of not less than \$200 nor more than \$500 recoverable under *The Summary Convictions Act*. 1926, c. 47, s. 16, *part*.

Rev. Stat.
c. 121

FORM 1.

(Section 4.)

FORM OF APPLICATION FOR LICENSE.

AN ACT RESPECTING PRIVATE DETECTIVES.

I, _____ of the _____
of _____ in the County of _____,
apply for a license under the said Act to engage in the business of
a private detective and furnishing information as provided in the
said Act. I propose to carry on business at the City of _____
in premises known as No. _____ Street.
I am of the full age of _____ years. My present occupation
is _____. My former
occupations were _____. The following
persons and no others are associated with me in the proposed detec-
tive business:—

For reference I submit the names of three parties as follows:—

Dated this _____ day of _____, 19 _____

To the Honourable
The Provincial Treasurer.

1926, c. 47, Sched. "B", Form 1.

FORM 2.

(Section 5.)

AN ACT RESPECTING PRIVATE DETECTIVES.

Pursuant to the provisions of this Act, I hereby grant permission
to _____ of the _____ of _____ in the County
of _____ to carry on the business of a private detective and
furnishing information under the provisions of the said Act.

This license is to be in force for one year from this date.

Dated this _____ day of _____, 19 _____

Provincial Treasurer.

1926, c. 47, Sched. "B", Form 2.

CHAPTER 215.

The Optometry Act.

1. In this Act—Interpreta-
tion.

- (a) “Board” shall mean Board of Examiners in Optometry appointed under the authority of this Act; “Board.”
- (b) “Regulations” shall mean regulations made under the authority of this Act. 1919, c. 39, s. 2. “Regulations.”

2.—(1) There shall be a board known as the Board of Examiners in Optometry which shall be composed of not more than five persons appointed by the Lieutenant-Governor in Council. Appoint-
ment and
constitution
of Board.

(2) The first members of the Board shall be appointed for such terms respectively that an equal number, as far as possible, shall retire annually at the end of two, four and five years respectively, and thereafter at the expiration of office of any member, his successor shall be appointed for a period of five years. Term of
office.

(3) In the event of a vacancy occurring by the death, resignation or removal from office of any member, the vacancy shall be filled for the unexpired portion of the term for which such member was appointed. Vacancies.

(4) A member of the Board may be removed from office at any time for neglect of duty, incompetence or misconduct. Removal
from office.

(5) The Lieutenant-Governor in Council may appoint one of the members to be chairman of the Board and may also appoint a secretary of the Board. 1919, c. 39, s. 3. Chairman
and
Secretary.

3.—(1) The Board may make regulations:—

Regulations.

- (a) prescribing the course of training and education for persons engaging in business as optometrists or opticians and the qualifications of persons to be admitted to registration as optometrists or opticians;
- (b) providing for a course of instruction for candidates for registration in any technical school or other institution in Ontario;
- (c) for accepting the licenses, certificates or other evidence of qualification of persons applying for registration who have been carrying on business

as optometrists or opticians, or are qualified to do so in any other province of the Dominion of Canada;

- (d) for fixing the fees payable upon registration and by candidates for examination and registration and for certificates of registration or exemption;
- (e) for admitting to registration under this Act upon special terms any person who has served with the military or naval forces of Great Britain or any of her Allies in the Great War;
- (f) providing for the annual renewal of any certificate of registration or exemption issued under this Act and for the fees to be payable upon such renewals;
- (g) prescribing the procedure of the Board at its meetings and upon the hearing of a complaint that any person holding a certificate under this Act has been guilty of any violation of the law, or of incompetence or misconduct;
- (h) prescribing the duties of the secretary and staff of the Board;
- (i) generally for the better carrying out of the provisions of this Act.

Approval of regulations.

(2) The regulations shall not come into force or take effect until they have been approved by the Lieutenant-Governor in Council and such approval has been published in the *Ontario Gazette*. 1919, c. 39, s. 4.

Register.

4. The Board shall provide a register which shall be kept by the secretary, and in which shall be entered the name address and qualification of every person registered as an optometrist or optician in Ontario. 1919, c. 39, s. 5.

Admission to registration.

5. Every person who, after a day to be named by the Lieutenant-Governor by proclamation, files with the secretary of the Board an application, verified by oath or by statutory declaration, stating therein that the applicant is more than twenty-one years of age, is of good moral character, and possesses the qualifications as to general education, training and experience prescribed by the regulations, may be admitted to examination by the Board as to his qualifications as an optometrist or optician, and upon passing such examination shall be registered by the Board as possessing the qualifications required by this Act, and shall receive from the Board a certificate of such registration. 1919, c. 39, s. 6.

Persons practising at time of passing of Act.

6.—(1) Every person who, on or before such date as may be fixed by the regulations, makes application to the Board in the prescribed form, may be granted a certificate of exemption from registration under this Act, and the secretary of the Board shall enter in a book, to be kept for that purpose,

the name of every person applying for such certificate, with the address at which he resides, and the address at which he carries on business.

(2) The certificate of exemption may be granted upon proof to the satisfaction of the Board that the applicant:— Certificate of exemption.

- (a) was carrying on business as an optometrist or optician in Ontario at the time of the passing of this Act;
- (b) is a British subject by birth or naturalization;
- (c) is of good character;
- (d) possesses such education and technical qualifications as may be prescribed by the regulations. 1919, c. 39, s. 7.

7. Every person selling or fitting glasses shall deliver to each customer or person fitted, a bill of purchase which shall contain the signature, post office address and place of business of the person supplying the glasses, and frames or mountings supplied, and the prices charged therefor, and, in the case of a person holding a certificate under this Act, the number of his certificate of registration or exemption. 1919, c. 39, s. 8; 1920, c. 52, s. 2. Particulars of bill of purchase of lenses or frames.

8.—(1) Where the Board is satisfied that any person, whether or not he is the holder of a certificate under this Act, has been found guilty of illegal practices, incompetency, inebriety, fraud or misrepresentation, the Board may prohibit such person from practising or carrying on business as an optometrist or optician and may revoke any certificate granted to him, but before the issue of such prohibition or the revocation of such certificate, the person charged shall be given notice in writing of the charge or charges against him and shall have an opportunity of being publicly heard and producing testimony on his own behalf. 1919, c. 39, s. 9 (1); 1920, c. 52, s. 3. Prohibiting order, revocation of certificate.

(2) Where a prohibition has been issued or a certificate has been revoked, the person charged may, after ninety days, apply to have the prohibition removed or the certificate re-granted, and the Board may remove the prohibition or re-grant the certificate upon the payment of such fees as may be fixed by the regulations. 1919, c. 39, s. 9 (2). Re-instatement.

9. Every person, not being the holder of a certificate under this Act, who, after a day to be fixed by the Lieutenant-Governor by proclamation:—

- (a) appends to his name the term “optometrist” or “optician,” or any abbreviation thereof, or wilfully and falsely pretends to be, or wilfully and Use of certain titles, etc.

falsely takes or uses any name, title, addition, abbreviation or description implying or calculated to lead people to believe that he is, or is recognized by law as an optometrist or optician, or that he is registered or possesses a certificate under this Act; or

Practising while prohibited.

(b) having been prohibited from carrying on business as an optometrist or optician, disobeys such prohibition; or

Peddling.

(c) sells, or fits, or supplies glasses by going from house to house or from place to place, or in any other manner than from a permanent place of business, and notwithstanding that he is the holder of a municipal license as a peddler or transient trader;

Rev. Stat. c. 121.

shall be guilty of an offence and shall incur a penalty of not less than \$10 nor more than \$100, to be recoverable under *The Summary Convictions Act*. 1919, c. 39, s. 10.

Exception as to medical practitioners.

10. Nothing in this Act shall be construed to apply to legally qualified medical practitioners. 1919, c. 39, s. 11.

Board may establish schools of instruction.

11.—(1) The Board may enter into agreements and arrangements with any recognized university in the Province of Ontario for the establishment of a faculty school and may make agreements and arrangements with schools and other educational institutions for the establishment of courses of study for persons seeking to qualify themselves to practise as optometrists and opticians and may establish and carry on schools of instruction and appoint such professors, lecturers, instructors, officers, servants and employees therefor as may be deemed necessary.

Powers of Board as to using moneys and holding lands.

(2) The Board may use any moneys that have heretofore or may hereafter come into their hands for any of the purposes and objects mentioned in subsection 1 and shall have and possess all powers that may be necessary or convenient for such purposes and objects and shall be deemed trustees for such purposes and objects with power without license in mortmain to acquire, hold, mortgage, charge, lease, sell or otherwise deal with real estate and to borrow money for such purposes and objects and to secure payment thereof by mortgage or pledge of the real and personal property vested in the Board.

Manner of execution of instruments by Board.

(3) The Board may take and execute any deed, mortgage, lease or other instrument under the name of "The Board of Examiners in Optometry," and every such deed, mortgage, lease or other instrument given and made by the Board shall be deemed to be sufficiently executed when so executed under the hand of the chairman and secretary of the Board and sealed with the seal of the Board, and the Board may sue and be sued by and under the said name. 1925, c. 50, s. 2.

CHAPTER 216.

The Employment Agencies Act.

1. In this Act,—

Interpretation.

- (a) “Deputy Minister” shall mean Deputy Minister of Labour; “Deputy Minister.”
- (b) “Employment agency” shall mean and include the business of procuring workmen, artificers, labourers, domestic servants and other persons for the performance of skilled or unskilled labour and the business of procuring employment for such classes of persons or any of them; “Employment agency.”
- (c) “Private employment agency” shall mean an employment agency in which the business of an employment agency is carried on for fee or reward; “Private employment agency.”
- (d) “Regulations” shall mean regulations made by the Lieutenant-Governor in Council under the authority of this Act; “Regulations.”
- (e) “Treasurer” shall mean Treasurer of Ontario; “Treasurer.”
- (f) “Voluntary employment agency” shall mean any charitable or other organization carried on without fee or reward by any voluntary organization, or a municipal corporation or any department or commission thereof or by any other persons. 1927, c. 56, s. 2. “Voluntary employment agency.”

2.—(1) The Deputy Minister may issue to any individual or any association of individuals or to any firm, or corporation, a license to carry on the business of an employment agency. License.

(2) The license shall remain in force until the 1st day of July, in the year next following that in which it is issued. Term of license.

(3) The license shall state the address at which the business is to be carried on. To state address.

(4) Where an employment agency is carried on by means of offices, branches or agencies in different municipalities, a separate license shall be required and a separate fee shall be payable in respect thereof for each municipality. 1927, c. 56, s. 3. Separate license and fee in each municipality.

Penalty for carrying on business without license.

Rev. Stat. c. 121.

3. Any person carrying on the business of an employment agency without such license shall incur a penalty of not less than \$10, and not more than \$500, to be recoverable under *The Summary Convictions Act*, before a police magistrate or two or more justices of the peace, and in the case of an offence committed by an individual shall in default of immediate payment of such penalty be imprisoned for a period of twelve months unless the penalty and costs are sooner paid. 1927, c. 56, s. 4.

Regulations.

4. The Lieutenant-Governor in Council may make regulations,—

Fees for licenses.

(a) for fixing the fees to be charged for licenses for private employment agencies and for the different classes of voluntary employment agencies, and for providing that in the case of any voluntary employment agency a nominal fee shall be charged for the license;

Regulations classifying employment agencies.

(b) classifying private employment agencies according to the class of employment to be procured and limiting the class of business which may be carried on by any employment agency;

Prohibiting granting of licenses.

(c) prohibiting the granting of licenses to any class of employment agencies in Ontario;

Exceptions from prohibitions.

(d) excepting from any such prohibition any employment agency or class of employment agencies, or for excepting from such prohibition any particular class of employment;

Conduct of business records.

(e) regulating the conduct of the business of employment agencies and prescribing the records, books and accounts to be kept by any class of employment agency;

Security by licensees.

(f) requiring security to be given by licensees and for fixing the amount of such security and declaring that a license may be granted to any class of employment agency without security being given;

Fees to be charged licensees.

(g) fixing the amount of the fee, reward or other remuneration to be charged for services rendered by an employment agency in procuring employees or employment;

Returns.

(h) providing for returns to be made when and as required by persons and firms to whom licenses are issued;

Inspectors and inspection.

(i) providing for the appointment of inspectors and the inspection of employment agencies;

- (j) for the revocation and cancellation of a license upon the conviction of the holder thereof for any offence or upon proof to the satisfaction of the Deputy Minister that the business of the licensee is being conducted dishonestly, unfairly or improperly; Revocation and cancellation of licenses.
- (k) conferring upon the Deputy Minister and upon the inspectors of employment agencies the power to hold inquiries into the conduct of the business of an employment agency and to take evidence under oath and providing that the Deputy Minister or inspector shall for the purpose of such inquiry have and exercise the powers which may be conferred upon a commissioner under *The Public Inquiries Act*; Inquiries by Deputy Minister and inspectors. Rev. Stat. c. 20.
- (l) exempting any voluntary employment agency or any class of voluntary employment agencies from the operation of any of the provisions of this Act; Exemptions.
- (m) generally for the better carrying out of the provisions of this Act. 1927, c. 56, s. 5. General.
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CHAPTER 217.

The Provincial Auctioneers' License Act.

Provincial
license.

1.—(1) The Minister of Agriculture may grant to any person, who in his opinion possesses special qualifications, a license to sell pure-bred live stock only, by public auction in Ontario.

Fee.

(2) Any person who resides in Ontario shall pay a fee of \$50, and any person who does not reside in Ontario shall pay a fee of \$100 for such license.

Sale in
conjunction
with local
auctioneer.

(3) Any person who holds a license under this Act shall not conduct a sale of pure-bred live stock unless an auctioneer holding a municipal license covering the municipality in which the sale is held is also employed at such sale. 1921, c. 57, s. 2.

Term of
license.

2. The license or any renewal thereof shall remain in force only during the current calendar year of issue. 1921, c. 57, s. 3.

Municipal
license not
required.

3. A person holding a license under this Act shall not be required to take out an auctioneer's license in any municipality for the sale of pure-bred live stock. 1921, c. 57, s. 4.

Revocation
of license.

4. The Minister may revoke the license at any time for any cause appearing to him sufficient. 1921, c. 57, s. 5.

SECTION XIII.

COMPANIES AND CORPORATIONS.

CHAPTER 218.

The Companies Act.

1. In this Act,

Interpreta-
tion.

- (a) “Company” shall mean a company having a capital divided into shares; “Company.”
- (b) “Corporation” shall include a company whether with or without share capital; “Corpora-
tion.”
- (c) “Private company” shall mean a company as to which by special Act, letters patent or supplementary letters patent “Private
company.”
- (i) The right to transfer its shares is restricted,
- (ii) The number of its shareholders, exclusive of persons who are in the employment of the company, is limited to fifty, two or more persons holding one or more shares jointly being counted as a single shareholder, and
- (iii) Any invitation to the public to subscribe for any shares, debentures, or debenture stock of the company is prohibited;
- (d) “Public company” shall mean a company not being a private company within the meaning of clause c. R.S.O. 1914, c. 178, s. 2. “Public
company.”

PART I.

INCORPORATION, RE-INCORPORATION, AMALGAMATION.

What corporations may be incorporated by letters patent.

2.—(1) The Lieutenant-Governor may, by letters patent, grant a charter to any number of persons, not less than five, of the age of twenty-one years, who petition therefor, constituting such persons and any others who have become subscribers to the memorandum of agreement hereinafter mentioned and persons who thereafter become shareholders or members in the corporation thereby created a corporation for any of the purposes to which the authority of this Legislature extends, except those of railway and incline railway and street railway companies, and corporations within the meaning of *The Loan and Trust Corporations Act*. R.S.O. 1914, c. 178, s. 3; 1924, c. 47, s. 2.

Exceptions.

Rev. Stat. c. 223.

Incorporation of private company with limited objects.

Rev. Stat. c. 223.

(2) Notwithstanding anything in subsection 1 contained a private company may be incorporated under this Act with power to lend and invest money on mortgage of real estate or otherwise, and shall not by reason thereof be deemed a corporation within the meaning of *The Loan and Trust Corporations Act*, but the number of its shareholders shall be limited by its letters patent or supplementary letters patent to five, and no such company shall issue bonds, debentures or debenture stock, or borrow money by the hypothecation of its securities except from the shareholders of the said company or receive money on deposit; provided that any such company shall be liable to payment of taxes as a loan corporation under section 3 of *The Corporations Tax Act*. 1926, c. 48, s. 2.

Rev. Stat. c. 29.

Powers of Provincial Secretary.

3. The Provincial Secretary may, under the seal of his office, have, use, exercise and enjoy any power, right or authority conferred by this Act on the Lieutenant-Governor but not those conferred on the Lieutenant-Governor in Council. R.S.O. 1914, c. 178, s. 4.

Incorporation with share capital.

4.—(1) The applicants for the incorporation of a company may petition the Lieutenant-Governor for the grant of a Charter.

Contents of petition.

(2) The petition, Form 1, shall show :

- (a) the proposed name of the company;
- (b) the objects for which the company is to be incorporated;
- (c) the place within Ontario where the head office of the company is to be situate;
- (d) the amount of the capital of the company, the number of shares, and the amount of each share;

(e) the name in full, the place of residence and the calling of each of the applicants;

(f) the names of the applicants, not less than three, who are to be the provisional directors of the company.

(3) The petition shall be accompanied by a memorandum of agreement in duplicate, Form 2, signed by the petitioners. Memo-
randum of
agreement.

(4) Each petitioner shall be a *bona fide* subscriber in his own right for the share or shares which by the memorandum of agreement he agrees to take. Petitioners
to be *bona
fide* sub-
scribers for
shares.

(5) The petition may ask to have embodied in the letters patent any provision which under this Act might be embodied in a by-law of the company. R.S.O. 1914, c. 178, s. 5. Prayer for
insertion
of special
clauses.

5.—(1) Any or all of the shares of any company may be issued without any nominal or par value, provided there be included in its letters patent, the following statements: No par
value shares

(a) The total number of shares that may be issued by the company;

(b) The number of shares, if any, which are to have a par value and the par value of each;

(c) The number of shares which are to be without par value; and

(d) Either one of the following clauses:

(i) The capital of the company shall be at least equal to the sum of the aggregate par value of all issued shares having par value, plus dollars (*the blank space being filled in with some number representing one dollar or more*) in respect to every issued share without par value, plus such amounts as, from time to time, by by-law of the company, may be transferred thereto; or

(ii) The capital of the company shall be at least equal to the sum of the aggregate par value of all issued shares having par value, plus the aggregate amount of consideration received by the company for the issuance of shares without par value, plus such amounts as, from time to time, by by-law of the company, may be transferred thereto.

(2) There may also be included in such letters patent an additional statement that the capital shall not be less than dollars (*the blank space being filled in with a number*). Such statements in the letters patent shall be in Amount of
capital.

lieu of any statements prescribed by this Act as to the amount of its capital stock or the number of shares into which the same shall be divided, or of which it shall consist.

Ranking of
shares.

(3) Subject to the designations, preferences, privileges and voting powers or restrictions or qualifications granted or imposed in respect to any class of shares, each share with or without par value shall be equal to every other share of the same class.

Sale of
shares.

(4) A company may issue and may sell its authorized shares without par value from time to time:—

- (a) for such consideration as may be prescribed in such letters patent; or
- (b) for such consideration as shall be the fair market value of such shares, and in the absence of fraud in the transaction, the judgment of the board of directors as to such value shall be conclusive; or
- (c) in the absence of fraud in the transaction, for such consideration as from time to time may be fixed by the board of directors pursuant to authority conferred in such letters patent; or
- (d) for such consideration as shall be consented to or approved by the holders of a majority of the shares entitled to vote at a meeting called in the manner prescribed by the by-laws, provided the call for such meeting shall contain notice of such purpose;

and any and all shares issued as permitted by this section shall be deemed fully paid and non-assessable, and the holder of such shares shall not be liable to the company or to its creditors in respect thereto. 1924, c. 47, s. 3.

Incorporation without
share capital.

6.—(1) The applicants for the incorporation of a corporation not having share capital may petition the Lieutenant-Governor for the grant of a charter.

Contents of
petition.

(2) The petition, Form 3, shall show:

- (a) the proposed name of the corporation;
- (b) the objects for which the corporation is to be incorporated;
- (c) the place within Ontario where the head office of the corporation is to be situate;
- (d) the name in full, the place of residence and the calling of each of the applicants;
- (e) the names of the first directors of the corporation.

(3) The petition shall be accompanied by a memorandum of agreement in duplicate, Form 4, signed by the petitioners setting out such regulations as may be deemed expedient for: Memorandum of agreement.

- (a) the election of members, trustees, directors and officers;
- (b) the holding of meetings of members, trustees and directors;
- (c) the establishment of branches;
- (d) the payment of directors, trustees, officers and employees; and
- (e) the control and management of the affairs of the corporation.

(4) The memorandum shall be expressed in separate paragraphs numbered consecutively, and the petitioners may adopt all or any of the provisions of Form 4 or may substitute others therefor. Form of. R.S.O. 1914, c. 178, s. 6.

7. In so far as the letters patent and supplementary letters patent do not exclude or modify the regulations in Form 4, those regulations shall, so far as practicable, be the regulations of a corporation not having share capital in the same manner and to the same extent as if they were contained in the letters patent or supplementary letters patent. Effect of regulations in memorandum. R.S.O. 1914, c. 178, s. 7.

8. The Lieutenant-Governor on an application for letters patent or supplementary letters patent may give to the corporation a name different from its proposed or existing name, as the case may be, and may vary the objects or other provisions or terms stated in the petition or memorandum of agreement. Change of name or terms of application. R.S.O. 1914, c. 178, s. 8.

9. A corporation without share capital heretofore or hereafter incorporated, with the consent in writing of all its members, may by by-law provide for the creation of a capital divided into shares and for the allotment and payment of such shares and may fix and prescribe the rights and privileges of the shareholders; but no such by-law shall take effect until confirmed by letters patent or by supplementary letters patent. Creation of capital of corporation not already having share capital. R.S.O. 1914, c. 178, s. 9.

10.—(1) Any two or more corporations to which this Act applies having the same or similar objects within the scope of this Act, may, in the manner herein provided, amalgamate and may enter into all contracts and agreements necessary to such amalgamation. Amalgamation of corporations.

(2) The corporations proposing to amalgamate may enter into a joint agreement for the amalgamation prescribing the terms and conditions thereof, the mode of carrying the same Joint agreement between directors proposing to amalgamate, etc.

into effect, and stating the name of the new corporation, the names, callings, and places of residence of the first directors thereof and how and when the subsequent directors shall be elected, with such other details as may be necessary to perfect the amalgamation and to provide for the subsequent management and working of the new corporation, and in cases of companies the number of shares of the capital, the par value of each share, and the manner of converting the share capital of each of the companies into that of the new company.

Submission to shareholders or members of each corporation.

(3) The agreement shall be submitted to the shareholders or members of each of the corporations at a general meeting thereof called for the purpose of taking the same into consideration.

Consideration of agreement and certificate of adoption.

(4) At such meetings of the shareholders or members the agreement shall be considered, and if two-thirds of the votes of all the shareholders or members of each of such corporations are for the adoption of the agreement that fact shall be certified upon the agreement by the secretary of each of such corporations under the corporate seal thereof.

Petition for confirmation by letters patent.

(5) Thereupon the several corporations by their joint petition may apply to the Lieutenant-Governor for letters patent confirming the agreement, and on and from the date of the letters patent the corporations shall be deemed and taken to be amalgamated and to form one corporation by the name in the letters patent provided, and the corporation so incorporated shall possess all the property, rights, privileges and franchises and be subject to all the liabilities, contracts, disabilities and duties of each of the corporations so amalgamated. R.S.O. 1914, c. 178, s. 10.

Re-incorporation of corporation.

11. A corporation incorporated for purposes or objects within the scope of this Act, whether under a special or general Act, and being at the time of its application a subsisting and valid corporation, may apply for letters patent under this Act; and the Lieutenant-Governor may grant letters patent incorporating the shareholders or members of the corporation as a corporation under this Act. R.S.O. 1914, c. 178, s. 11.

Extension of powers on re-incorporation.

12. Where an existing corporation applies for the issue of letters patent under the provisions of the next preceding section, the Lieutenant-Governor may, by letters patent, limit the powers of the corporation or extend them to such other objects, within the scope of this Act, as the applicant desires, name the first directors of the new corporation and give to it the name of the old corporation or any other name. R.S.O. 1914, c. 178, s. 12.

Rights of creditors preserved.

13. All rights of creditors against the property, rights and assets of a corporation amalgamated or re-incorporated under the provisions of this Act, and all liens upon its pro-

perty, rights and assets shall be unimpaired by such amalgamation, or re-incorporation, and all debts, contracts, liabilities and duties of such corporation shall thenceforth attach to the new or re-incorporated corporation and may be enforced against it to the same extent as if such debts, contracts, liabilities and duties had been incurred or contracted by it. R.S.O. 1914, c. 178, s. 13.

14. A private company may be converted into a public company by supplementary letters patent if, Conversion of private company into a public company.

(a) a resolution determining that it is expedient that the company should be so converted is passed by a two-thirds vote of the shareholders at a general meeting of the company called for the purpose of considering the resolution, and Resolution therefor.

(b) the company files with the Provincial Secretary such a statement in lieu of a prospectus as the company, if a public company, would have had to file before allotting any of its shares or debentures or a prospectus together with such a statutory declaration as the company if a public company would have had to file before commencing business. R.S.O. 1914, c. 178, s. 14. Filing statement, etc.

15.—(1) Where a corporation has ceased to carry on business except for the purpose of winding up its affairs and has no debts or obligations that have not been provided for or protected the directors may pass by-laws for distributing the assets of the corporation or any part of them among the shareholders and in any case where the corporation has issued both preference and common shares, such by-laws may provide for distributing any part of the assets, in specie or otherwise, rateably among the holders of preference shares, and the remainder of such assets rateably among the holders of common shares. R.S.O. 1914, c. 178, s. 15 (1); 1915, c. 20, s. 18 (1). Distribution of assets on ceasing to carry on business.

(2) The by-law shall not take effect unless or until it is confirmed by a two-thirds vote of the shareholders present in person or by proxy at a general meeting duly called for considering the same and by the Lieutenant-Governor in Council. R.S.O. 1914, c. 178, s. 15 (2). Conditions.

(3) When so confirmed any such by-law shall be valid and binding upon all shareholders of the corporation. 1915, c. 20, s. 18 (2). Confirmation of by-law for distribution.

16.—(1) The directors of a corporation may pass a by-law authorizing an application to the Lieutenant-Governor for the issue of supplementary letters patent providing for,— Supplementary letters patent for certain purposes.

(a) increasing or decreasing the capital; Varying capital stock.

- Re-dividing shares. (b) re-dividing the capital of the corporation into shares of smaller or larger amount;
- Varying powers. (c) limiting the powers of the corporation or extending them to such objects within the scope of this Act as the corporation may desire; R.S.O. 1914, c. 178, s. 16 (1), cls. (a-c).
- Varying borrowing powers. (d) limiting or increasing the amount which the corporation may borrow upon debentures or otherwise where such amount is specified in the letters patent or supplementary letters patent of the corporation; R.S.O. 1914, c. 178, s. 16 (1), cl. (d); 1916, c. 35, s. 2.
- Amending charter. (e) varying any provision contained in the special Act or letters patent or supplementary letters patent;
- Making other provisions. (f) any other matter or thing in respect of which provision might have been made had the corporation been incorporated under this Act. R.S.O. 1914, c. 178, s. 16 (1), cls. (e, f).
- Changing shares from par value to no par value. (g) changing all or any of its previously authorized shares with par value, issued or unissued, into the same or a different number of shares of any class or classes without par value;
- From no par value to value. (h) changing all or any of its previously authorized shares without par value, issued or unissued, into the same or a different number of shares of any class or classes with par value;
- Classifying shares. (i) classifying or re-classifying any shares, either with or without par value. 1924, c. 47, s. 4.
- Confirming by-law. (2) The application shall not be made until the by-law has been confirmed, in the case of a company, by a vote of the shareholders present or represented by proxy, at a general meeting duly called for considering the same, and holding not less than two-thirds of the issued capital stock represented at such meeting or, in the case of a corporation not having share capital, by a vote of two-thirds of the members so present or represented as the case may be.
- Increase of capital. (3) The capital shall not be increased until ninety per centum of the authorized capital has been subscribed and fifty per centum paid thereon.
- Rights of creditors preserved. (4) On a reduction of the capital of a company the liability of shareholders to persons who at the time of such reduction are creditors shall remain as though the reduction had not been made. R.S.O. 1914, c. 178, s. 16 (2-4).

Sufficiency of material to be established.

17. Before letters patent or supplementary letters patent are issued the applicants shall establish to the satisfaction of the Provincial Secretary the sufficiency of the petition,

memorandum of agreement, by-laws, resolution and all documents filed on such application, and shall furnish such evidence of the *bona fides* of the application as he may deem necessary. R.S.O. 1914, c. 178, s. 17.

18. The Provincial Secretary, or any officer to whom the application may be referred, may take evidence under oath. Proof of matters imposed under this Act. R.S.O. 1914, c. 178, s. 18.

19. The letters patent or supplementary letters patent may impose any conditions with respect to the by-laws of a corporation or any amendments thereof, and in such event the corporation shall not carry on its undertaking, or any part thereof, nor shall the by-laws be of any force or validity until the conditions so imposed are complied with. Conditions may be imposed in letters patent. R.S.O. 1914, c. 178, s. 19.

20. The letters patent or supplementary letters patent may authorize the Provincial Secretary whenever he sees fit to appoint an auditor to examine the books of the corporation or an inspector to inspect its undertaking and affairs, or to call a general meeting of its shareholders or members, upon such terms as may be therein set out. Providing for appointment of auditor. R.S.O. 1914, c. 178, s. 20.

21. Notice of the granting of letters patent or supplementary letters patent shall be given forthwith by the Provincial Secretary in the *Ontario Gazette*. Notice of issuing letters patent. R.S.O. 1914, c. 178, s. 21.

22. A corporation shall be deemed to be existing from the date of the letters patent incorporating the same. Commencement of existence. R.S.O. 1914, c. 178, s. 22.

23.—(1) A company shall possess as incidental and ancillary to the powers set out in the letters patent or supplementary letters patent power to, Powers incidental to company.

(a) carry on any other business, whether manufacturing or otherwise, capable of being conveniently carried on in connection with its business or calculated directly or indirectly to enhance the value of or render profitable any of the company's property or rights;

(b) acquire or undertake the whole or any part of the business, property and liabilities of any person or company carrying on any business which the company is authorized to carry on, or possessed of property suitable for the purposes of the company;

- (c) apply for, purchase or otherwise acquire any patents, licenses, concessions and the like, conferring any exclusive or non-exclusive, or limited right to use, or any secret or other information as to any invention which may seem capable of being used for any of the purposes of the company, or the acquisition of which may seem calculated directly or indirectly to benefit the company, and to use, exercise, develop or grant licenses in respect of, or otherwise turn to account the property, rights or information so acquired;
- (d) enter into partnership or into any arrangement for sharing of profits, union of interests, co-operation, joint adventure, reciprocal concession or otherwise, with any person or company carrying on or engaged in or about to carry on or engage in any business or transaction which the company is authorized to carry on or engage in or any business or transaction capable of being conducted so as directly or indirectly to benefit the company; and to lend money to, guarantee the contracts of, or otherwise assist any such person or company, and to take or otherwise acquire shares and securities of any such company, and to sell, hold, re-issue, with or without guarantee, or otherwise deal with the same;
- (e) subject to section 96 take, or otherwise acquire and hold, shares in any other company having objects altogether or in part similar to those of the company or carrying on any business capable of being conducted so as directly or indirectly to benefit the company;
- (f) enter into any arrangements with any authorities, municipal, local or otherwise, that may seem conducive to the company's objects, or any of them, and obtain from any such authority any rights, privileges and concessions which the company may think it desirable to obtain, and carry out, exercise and comply with any such arrangements, rights, privileges and concessions;
- (g) establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company, or its predecessors in business, or the dependents or connections of such persons, and grant pensions and allowances, and make payments towards insurance, and subscribe or guarantee money for charitable or benevolent objects, or for any exhibition or for any public, general or useful object;

- (h) promote any company or companies for the purpose of acquiring or taking over all or any of the property and liabilities of the company, or for any other purpose which may seem directly or indirectly calculated to benefit the company;
- (i) purchase, take on lease or in exchange, hire or otherwise acquire any personal property and any rights or privileges which the company may think necessary or convenient for the purposes of its business and in particular any machinery, plant, and stock in trade;
- (j) construct, improve, maintain, work, manage, carry out or control any roads, ways, tramways, branches or sidings, bridges, reservoirs, watercourses, wharves, manufactories, warehouses, electric works, shops, stores and other works and conveniences which may seem calculated directly or indirectly to advance the company's interests, and contribute to, subsidize or otherwise assist or take part in the construction, improvement, maintenance, working, management, carrying out or control thereof;
- (k) lend money to customers and others having dealings with the company and guarantee the performance of contracts by any such persons;
- (l) draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading, warrants, and other negotiable or transferable instruments;
- (m) sell or dispose of the undertaking of the company or any part thereof for such consideration as the company may think fit, and in particular for shares, debentures or securities of any other company having objects altogether or in part similar to those of the company, if authorized so to do by the vote of a majority in number of the shareholders present or represented by proxy, at a general meeting duly called for considering the matter, and holding not less than two-thirds of the issued capital stock of the company;
- (n) adopt such means of making known the products of the company as may seem expedient, and in particular by advertising in the press, by circulars, by purchase and exhibition of works of art or interest, by publication of books and periodicals and by granting prizes, rewards and donations;
- (o) sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the company;

(p) do all or any of the above things, and all things authorized by the letters patent or supplementary letters patent as principals, agents, contractors, trustees or otherwise, and either alone or in conjunction with others;

(q) do all such other things as are incidental or conducive to the attainment of the above objects and of the objects set out in the letters patent and supplementary letters patent.

Powers may
be withheld.

(2) All or any of the powers set out in subsection 1 may be withheld by the letters patent or supplementary letters patent. R.S.O. 1914, c. 178, s. 23.

Incidental
powers.

24.—(1) A corporation incorporated under this Act shall have power:—

Buildings,
etc.

(a) to construct, maintain and alter any buildings or works necessary or convenient for the purposes of the corporation;

Real estate.

(b) to acquire by purchase, lease or other title, and to hold any real estate necessary for the carrying on of its undertaking, and when no longer required . to sell, alienate and convey the same.

Incorporation
subject
to trusts.

(2) The corporation shall, upon its incorporation, be invested with all the property and rights, real and personal theretofore held by or for it under any trust created with a view to its incorporation. R.S.O. 1914, c. 178, s. 24.

Payment of
property
acquired in
shares.

25. The directors if authorized so to do by a vote of shareholders present or represented by proxy at a general meeting duly called for considering the matter and holding not less than two-thirds of the issued capital stock represented at the meeting may pay for any property acquired or taken over or purchased under the provisions of clause (b) or clause (i) of subsection 1 of section 23 or clause (b) of section 24 wholly or partly in shares fully or partly paid up. R.S.O. 1914, c. 178, s. 25.

Restrictions
as to holding
real estate.

26.—(1) Unless other special statutory enactments apply, any land or interest therein at any time acquired by the corporation and not required for its actual use and occupation or for the purposes of its business, or not held by way of security, shall not be held by the corporation, or by any trustee on its behalf, for a longer period than seven years after the acquisition thereof, or after it has ceased to be required for its actual use and occupation or for the purposes of its business, but shall be absolutely sold and disposed of, so that the corporation shall no longer retain any interest therein unless by way of security.

(2) Any such land or interest therein not within the exceptions hereinbefore mentioned, held by the corporation for a longer period than seven years without being disposed of shall be forfeited to His Majesty for the use of Ontario.

Forfeiture of real estate.

(3) The Lieutenant-Governor in Council may extend such period from time to time, not exceeding in the whole twelve years, and no such forfeiture shall take effect or be enforced until the expiration of at least six months after notice in writing to the corporation of the intention of His Majesty to claim the same, and during such six months the corporation may dispose of the land or its interest therein.

Extension of time for holding.

(4) The corporation shall give to the Provincial Secretary when required a full and correct statement of all lands or interests therein at the date of such statement held by or in trust for the corporation. R.S.O. 1914, c. 178, s. 26.

Statement to be furnished to Provincial Secretary.

27. The provisions of this Act relating to matters preliminary to the issue of the letters patent or supplementary letters patent shall be deemed to be directory only; and no letters patent or supplementary letters patent, notice, order or other proceeding by or on behalf of the Lieutenant-Governor, Provincial Secretary or other Government or Departmental officer under this Act shall be void or voidable on account of any irregularity, or otherwise, in respect of any matter preliminary to the issue of the letters patent or supplementary letters patent, notice, order or other proceeding or of any alterations in any petition or documents submitted in order to comply with this Act or with the departmental practice thereunder. R.S.O. 1914, c. 178, s. 27.

Defects of form not to invalidate letters patent etc.

28.—(1) If a corporation incorporated by letters patent does not go into actual *bona fide* operation within two years after incorporation, or for two consecutive years does not use its corporate powers, such powers, except so far as is necessary for the winding up of the corporation, shall be *ipso facto* forfeited.

Forfeiture of charter for non-user.

(2) In any action or proceeding where such non-user is alleged proof of user shall lie upon the corporation.

Proof of user.

(3) No such forfeiture shall affect prejudicially the rights of creditors as they exist at the date of the forfeiture. R.S.O. 1914, c. 178, s. 28.

Rights of creditors not affected.

29. Where a municipal corporation has passed or may hereafter pass a by-law to license, regulate and govern persons or proprietary clubs as provided by paragraph 1 of section 429 of *The Municipal Act*, no charter heretofore or hereafter granted whether by special Act or letters patent or otherwise for any of the purposes mentioned in that paragraph shall be construed as exempting the holders thereof from compliance with the provisions of such by-law or as affecting the discre-

Clubs not to be exempted from municipal by-laws as to billiard tables, etc.

Rev. Stat. c. 233.

Rev. Stat.
c. 233.

tionary power to refuse or grant a license conferred by subsection 4 of section 262 of *The Municipal Act*. 1915, c. 20, s. 18 (3).

Revocation
of charter.

30. The letters patent by which a corporation is incorporated and any supplementary letters patent amending or varying the same may, at any time, be declared to be forfeited and may be revoked and made void by the Lieutenant-Governor in Council, on sufficient cause being shown, upon such conditions and subject to such provisions as he may deem proper. R.S.O. 1914, c. 178, s. 29.

Company
with less
than five
members
exercising
corporate
powers,
shareholders
personally
liable.

31.—(1) If a corporation exercises its corporate powers when the number of its shareholders or members is less than five, for a period of more than six months after the number has been so reduced, every person who is a shareholder or member of the corporation during the time that it so exercised its corporate powers after such period of six months and is cognizant of the fact that it so exercises its corporate powers, shall be severally liable for the payment of the whole of the debts of the corporation contracted during such time, and may be sued for the same without the joinder in the action of the corporation or of any other shareholder or member.

Shareholder
by protest
may relieve
himself from
liability.

(2) A shareholder or member who has become aware that the corporation is so exercising its corporate powers may serve a protest in writing on the corporation and may by registered letter notify the Provincial Secretary of such protest having been served and of the facts upon which it is based, and such shareholder or member may thereby and not otherwise, from the date of his protest and notification, exonerate himself from liability.

Revocation
of charter
if number
of share-
holders not
brought
up to five.

(3) If, after notice from the Provincial Secretary, the corporation refuses or neglects to bring the number of its shareholders or members up to five such refusal or neglect may, upon the report of the Provincial Secretary, be regarded by the Lieutenant-Governor in Council as sufficient cause for the revocation of the charter of the corporation. R.S.O. 1914, c. 178, s. 30.

Surrender
of charter.

32.—(1) The charter of a corporation incorporated by letters patent may be surrendered if the corporation proves to the satisfaction of the Lieutenant-Governor:—

(a) that it has no debts or obligations; or,

(b) that it has parted with its property, divided its assets rateably amongst its shareholders or members and has no debts or liabilities, or,

(c) that the debts and obligations of the corporation have been duly provided for or protected or that the creditors of the corporation or other persons holding them consent; and

(d) that the corporation has given notice of the application for leave to surrender by publishing the same once in the *Ontario Gazette* and once in a newspaper published at or as near as may be to the place where the corporation has its head office.

(2) The Lieutenant-Governor, upon a due compliance with the provisions of this section, may accept a surrender of the charter and direct its cancellation, and fix a date upon and from which the corporation shall be dissolved, and the corporation shall thereby and thereupon become dissolved accordingly. R.S.O. 1914, c. 178, s. 31.

33. The corporate existence of a corporation incorporated otherwise than by letters patent may be terminated by order of the Lieutenant-Governor upon petition therefor by such corporation under like circumstances, in like manner and with like effect as a corporation incorporated by letters patent may surrender its charter. R.S.O. 1914, c. 178, s. 32.

34.—(1) Notwithstanding the dissolution, under section 33, of a company, the shareholders or members among whom its assets have been divided shall, to the amount received by them respectively upon such division, remain liable to the creditors of the company and an action may be brought in any court of competent jurisdiction to enforce such liability, but such action shall be commenced within and not after one year from the date of such dissolution of the company.

(2) When there are numerous shareholders or members the court may permit an action to be brought against one or more as representatives of the class and, if the plaintiff establishes his claim as creditor, may make an order of reference and add as parties in the master's office all such shareholders or members as may be found and the master shall determine the amount which each should contribute towards the plaintiff's claim and may direct payment of the sums so to be ascertained. 1926, c. 48, s. 3, *part*.

35. The Lieutenant-Governor in Council may make regulations with respect to:—

(a) the cases in which notice of application for letters patent or supplementary letters patent must be given;

- (b) the forms of letters patent, supplementary letters patent, notices and other instruments and documents relating to applications and other proceedings;
- (c) the form and manner of the giving of any notice required by this Act;
- (d) such other matters as he may deem necessary or expedient for carrying out the objects and provisions of this Act,

and such regulations shall be published in the *Ontario Gazette* and shall be laid before the Assembly forthwith if the Assembly is then in session, and if not then in session within fifteen days after the opening of the next session. R.S.O. 1914, c. 178, s. 33.

PART II.

NAME OF CORPORATION.

Use of word
"Limited."

36.—(1) The corporate name of every company with share capital shall have the word "limited" as the last word thereof.

Idem.

(2) Where the company or any director, manager, officer or employee thereof uses the name of the company, the word "limited" shall appear as the last word thereof.

Saving.

(3) Stamping, writing, printing, or otherwise marking on goods, wares and merchandise of the company, or upon packages containing the same shall not be deemed to be a use of the name within the provisions of this section.

Abbreviation.

(4) Where the word "company," "club," "association," or other equivalent word forms part of the name the word "limited" may be abbreviated to "Ltd." or "Ld." R.S.O. 1914, c. 178, s. 34.

Penalty for
using
word
"limited"
without
authority.

(5) If any person or persons trade or carry on business under any name or title of which "limited" is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding \$10 for every day upon which that name or title has been used. 1916, c. 35, s. 3.

"Private
Company"
to be on seal
and on
share
certificates.

37. Every private company shall have on its seal the words "private company" and upon every share certificate issued by the company there shall be distinctly written or printed the same words. R.S.O. 1914, c. 178, s. 35.

38. Every company and every director, manager, officer Penalty. or other employee making default in complying with the provisions of the next preceding two sections shall incur a penalty not exceeding \$10 for a first offence and not exceeding \$100 for every subsequent similar offence. R.S.O. 1914, c. 178, s. 36.

39. The corporate name shall be one which is not objectionable upon any public ground and is not that of any known corporation or association incorporated or unincorporated, or of any partnership or of any individual, or any name under which any known business is being carried on, or so nearly resembling the same as to be calculated to deceive; but a subsisting corporation, association, partnership, individual or person may consent that its or his name, in whole or in part, be granted to a new corporation incorporated for the purpose of acquiring or promoting the objects of such business. R.S.O. 1914, c. 178, s. 37. Name to be free from objection. Proviso

40.—(1) The name of a corporation which has not, for three consecutive years, made the annual summary prescribed by this Act may be given in whole or in part to a new corporation, unless the defaulting corporation, on notice by the Provincial Secretary by registered letter addressed to the corporation or its president at the address shown by its last return, proves to the satisfaction of the Lieutenant-Governor that it is still a subsisting corporation. When name of one corporation may be given to another.

(2) If, at the end of one month from the date of such notice, the Provincial Secretary has not been satisfied by the corporation or its president that the corporation is a subsisting corporation it shall be no longer entitled to the use of the corporate name. Idem.

(3) Where no annual summary has been filed by a corporation for three years immediately following its incorporation its name may be given to another corporation without notice and such first-mentioned corporation shall be deemed not to be subsisting. R.S.O. 1914, c. 178, s. 38. Idem.

41. Where it is made to appear, to the satisfaction of the Lieutenant-Governor in Council, that any corporation is incorporated under a name the same as or so similar to that of an existing corporation, company, partnership, association, individual, or business as to be calculated to deceive the Lieutenant-Governor in Council may by Order change the name of the corporation. R.S.O. 1914, c. 178, s. 39. Change of name if objectionable.

42.—(1) Where a corporation is desirous of changing its name the Lieutenant-Governor, upon being satisfied that the corporation is solvent, and that the change desired is Or upon application.

not for any improper purpose, and is not otherwise objectionable, may change the name of the corporation.

In case proposed name is objectionable.

(2) Where the proposed name is considered objectionable the Lieutenant-Governor may change the name of the corporation to some unobjectionable name. R.S.O. 1914, c. 178, s. 40.

Notice of change.

43. Notice of the change of the name of a corporation shall be given by the Provincial Secretary by publication in the *Ontario Gazette*. R.S.O. 1914, c. 178, s. 41.

Change not to affect rights or obligations.

44. The alteration of the name of a corporation shall not affect its rights or obligations. R.S.O. 1914, c. 178, s. 42.

PART III.

MEETINGS OF COMPANY.

First Meeting of Private Company, or of a Company which is not offering Shares, Debentures or Debenture Stocks to the Public for Subscription.

First meeting.

45.—(1) The provisional directors of a private company or a company which does not offer shares, debentures or debenture stock to the public for subscription shall call a general meeting of the company to be held at a convenient place within six months from the date of the letters patent for the purpose of electing directors, appointing auditors, sanctioning the by-laws of the company, and transacting such other business as may be necessary to enable the company to carry on its undertaking, and shall, at least ten days before the day on which such meeting is to be held, give notice of such meeting by registered letter addressed to each shareholder, setting out in detail the business to be transacted and matters to be considered thereat. R.S.O. 1914, c. 178, s. 43 (1); 1918, c. 20, s. 28.

Notice.

Report of first meeting.

(2) The provisional directors shall report to such meeting

(a) the number of shares subscribed;

(b) the names of the subscribers;

(c) the amount paid thereon;

(d) all contracts entered into by or on behalf of the company;

(e) the amount of the preliminary expenses; and

(f) a financial statement of the affairs of the company signed by the auditors, if any.

(3) If the meeting is not called by the provisional directors as aforesaid any three or more shareholders may call the meeting. Shareholders may call. R.S.O. 1914, c. 178, s. 43 (2, 3).

(As to a statutory meeting of public companies, see section 119).

General Meetings.

46. In default of other express provision in the special Act, the letters patent, or supplementary letters patent or by-laws of a company, notice of the time and place for holding general meetings of every company, including the statutory meeting and the annual and special meetings, shall be given at least ten days previously thereto by registered letter to each shareholder at his last known address, and by an advertisement in a newspaper published at or as near as may be to the place where the company has its head office and to the chief place of business of the company if these differ. Notice of meeting. R.S.O. 1914, c. 178, s. 44.

47.—(1) The annual meeting of the shareholders of the company shall be held at such time and place in each year as the special Act, letters patent, supplementary letters patent or by-laws of the company may provide, and in default of any such provision on the fourth Wednesday in January in every year. Annual meeting.

(2) The directors shall, at least seven days before the day on which the meeting is held, send by post to every shareholder a report containing Report to be sent shareholders.

(a) a balance sheet made up to a date not more than three months before such annual meeting; Balance sheet.

(b) an abstract of income and expenditure for the financial period ending upon the date of such balance sheet; Abstract of income and expenditure.

(c) the report of the auditor or auditors; Auditor's report.

(d) such further information respecting the company's financial position as the special Act, the letters patent, supplementary letters patent, or the by-laws of the company may require; Further necessary information.

and the directors shall lay such report before the meeting.

Balance sheet to show assets and liabilities.

(3) Every balance sheet shall be drawn up so as to distinguish at least the following classes of assets and liabilities, namely:

- (a) Cash;
- (b) Debts owing to the company from its customers;
- (c) Debts owing to the company from its directors, officers and shareholders;
- (d) Stock in trade;
- (e) Expenditures made on account of future business;
- (f) Land, buildings and plant;
- (g) Goodwill, franchises, patents and copyrights, trademarks, leases, contracts and licenses;
- (h) Debts owing by the company secured by mortgage or other lien upon the property of the company;
- (i)* Debts owing by the company but not secured;
- (k) Amount received on common shares;
- (l) Amount received on preferred shares;
- (m) Indirect and contingent liabilities.

When report need not be sent.

(4) If the by-laws of the company so provide it shall not be necessary to send the report mentioned in subsection 2 to the shareholders. R.S.O. 1914, c. 178, s. 45.

Report furnished on application.

(5) A copy of such report shall be furnished forthwith to any shareholder on written application.

Penalty.

(6) Every company which neglects or refuses to furnish such report for which application has been made as aforesaid shall be liable to a penalty not exceeding \$100. 1923, c. 37, s. 2.

Special general meeting by directors on requisition therefor.

48.—(1) Upon the receipt of a requisition in writing, signed by the holders of not less than one-tenth of the subscribed shares of the company, setting out the objects of the proposed meeting, the directors, or, if there is not a quorum in office, the remaining directors or director shall forthwith convene a special general meeting of the company for the transaction of the business mentioned in the requisition.

By shareholders.

(2) If the meeting is not called and held within twenty-one days from the date upon which the requisition was left at the head office of the company any shareholders holding not less than one-tenth in value of the subscribed shares of the company, whether they signed the requisition or not, may themselves convene such special general meeting.

(3) The directors may at any time, of their own motion, ^{By} call a special general meeting of the company for the trans- ^{directors.} action of any business.

(4) Notice of any special general meeting shall state the ^{Notice of.} business which is to be transacted at it. R.S.O. 1914, c. 178, s. 46.

49. The president shall preside as chairman at every gen- ^{Presiding} eral meeting of the company, and if there is no president or ^{officer.} vice-president, or if at any meeting neither of them is pre- present within fifteen minutes after the time appointed for holding the meeting, the shareholders present shall choose ^{Chairman} one of their number to be chairman. R.S.O. 1914, c. 178, ^{to be elected} ^{when neces-} s. 47. ^{sary.}

50. The chairman may, with the consent of the meeting ^{Adjournment} and subject to such conditions as the meeting may decide, ^{by consent.} adjourn any meeting from time to time and from place to place. R.S.O. 1914, c. 178, s. 48.

51.—(1) At any general meeting, unless a poll is de- ^{Procedure} manded, a declaration by the chairman that a resolution has ^{as to} been carried, and an entry to that effect in the minutes of the ^{resolution.} company, shall be *prima facie* evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

(2) If a poll is demanded it shall be taken in such man- ^{Taking vote} ner as the by-laws prescribe, and if the by-laws make no ^{when poll is} provision therefor then as the chairman may direct. ^{demand.}

(3) In the case of an equality of votes at any general ^{Casting vote.} meeting the chairman shall be entitled to a second or cast- ing vote. R.S.O. 1914, c. 178, s. 49.

52. Subject to the special Act, letters patent, supple- ^{Votes.} mentary letters patent or by-laws, at all meetings of share- holders every shareholder shall be entitled to as many votes as he holds shares in the company, and may vote by proxy, but no shareholder in arrear in respect of any call shall be ^{Shareholders} entitled to vote at any meeting. R.S.O. 1914, c. 178, s. 50. ^{in arrear not} ^{to vote.}

53.—(1) The instrument appointing a proxy shall be in ^{Proxy.} writing under the hand of the appointor or of his attorney duly authorized in writing, or, if the appointor is a corpora- tion, either under the common seal or under the hand of an officer or attorney so authorized, and shall cease to be valid after the expiration of one year from the date thereof.

(2) No person shall act as a proxy unless he is entitled on ^{Qualification} his own behalf to be present and vote at the meeting at ^{of proxy.} which he acts as proxy or has been appointed to act at that meeting as proxy for a corporation.

Not to vote
on show of
hands.

(3) A proxy for an absent shareholder shall not have the right to vote on a show of hands.

Form of.

(4) An instrument appointing a proxy may be according to Form 6 or such other form as may be prescribed by the by-laws of the corporation and shall not contain anything but the appointment of the proxy or a revocation of a former instrument appointing a proxy.

Revocation
of.

(5) An instrument appointing a proxy may be revoked at any time. R.S.O. 1914, c. 178, s. 51.

Deposit of
proxy.

(6) The directors may by by-law prescribe the period of time immediately preceding any special or general meeting of the shareholders within which the instrument appointing the proxy shall be deposited with the company; provided that in no case shall such period of time exceed seventy-two hours immediately preceding the meeting for which such proxy is to be used or acted upon; and further provided that any period of time so fixed shall be specified in the notice calling the meeting. 1919, c. 41, s. 2.

Where
meetings to
be held.

54. Meetings of the shareholders, directors and executive committees shall be held at the place where the head office of the company is situate except when otherwise provided by the special Act, letters patent, supplementary letters patent or the by-laws of the company, but shall not be held out of Ontario unless when so authorized by the special Act, letters patent or supplementary letters patent. R.S.O. 1914, c. 178, s. 52.

PART IV.

SHARES, CALLS.

Generally.

Limit of
shareholder's
holding in
certain
cases.

55. No shareholder of a co-operative cold storage company or association to which aid has been or may hereafter be granted under the provisions of any statute, or of a cheese and butter manufacturing company carried on on the co-operative plan, shall hold shares to an amount exceeding \$1,000. R.S.O. 1914, c. 178, s. 53.

Share
certificate.

56.—(1) Every shareholder shall, without payment, be entitled to a certificate under the common seal of the company stating the number of shares held by him and the amount paid up thereon, but, in respect of a share or shares held jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint shareholders shall be sufficient delivery to all.

(2) The certificate shall be *prima facie* evidence of the title of the shareholder to the shares mentioned in it. Evidence of title.

(3) Where a company issues shares in pounds sterling, francs or marks, shares previously issued in Canadian currency may, at the option of the holder, be exchanged for shares in pounds sterling, francs or marks. Shares issued in pounds sterling or francs or marks.

(4) For the purpose of dividends, distribution of assets, voting and all other matters relating to the amount of shares issued in pounds sterling or francs or marks, one pound sterling or twenty-five francs or twenty marks shall be calculated as five dollars. Fixed value of shares so issued.

(5) Shares shall include share warrants, where the company is authorized to issue the same. R.S.O. 1914, c. 178, s. 54. Shares to include share warrants.

57. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding twenty-five cents and on such terms, if any, as to evidence and indemnity as the directors think fit. R.S.O. 1914, c. 178, s. 55. Lost certificate.

58.—(1) The shares of the company shall be deemed personal estate and shall be transferable on the books of the company in such manner and subject to such conditions and restrictions as by this Act, the special Act, the letters patent, supplementary letters patent or by-laws of the company may be prescribed. Shares personal estate.

(2) Subject to section 60, no by-law shall be passed which in any way restricts the right of a holder of paid up shares to transfer the same, but nothing in this section shall prevent the regulation of the mode of transfer thereof. R.S.O. 1914, c. 178, s. 56. Restrictions on transfer.

59.—(1) No transfer of shares the whole amount whereof has not been paid up shall be made without the consent of the directors. When directors' consent required.

(2) Where any such transfer is made, with the consent of the directors, to a person who is not apparently of sufficient means to fully pay up such shares, subject to subsection 3, the directors shall be jointly and severally liable to the creditors of the company in the same manner and to the same extent as the transferring shareholder, but for such transfer, would have been. Their liability if they allow transfers to persons without means.

(3) If any director present when such transfer is allowed forthwith, or if any director then absent, within twenty-four hours after he becomes aware of such transfer, and is able to do so, enters his written protest against the same, and, within eight days thereafter, causes such protest to be notified by registered letter to the Provincial Secretary, such Relief from liability by entering protest.

director shall thereby and not otherwise exonerate himself from such liability.

Liability where call remains unpaid.

(4) Where a share upon which a call is unpaid is transferred, with the consent of the directors, the transferee shall be liable for the call to the same extent and with the same liability to forfeiture of the shares, if the call remains unpaid, as if he had been the holder when the call was made, and the transferor shall remain also liable for the call until it has been paid. R.S.O. 1914, c. 178, s. 57.

Refusal to register transfer of shareholder indebted to corporation.

60. Where the letters patent, supplementary letters patent or by-laws of a corporation confer that power on the directors, they may decline to register a transfer of shares belonging to a shareholder who is indebted to the corporation. R.S.O. 1914, c. 178, s. 58.

Closing transfer books pending distribution of dividend.

61. The directors, upon the passing of a by-law authorizing the payment of a dividend upon shares, may direct that no entry of transfers shall be made in the books of the company for a period of two weeks immediately preceding the payment of such dividend, and payment thereof shall be made to the shareholders of record on the date of closing such books. R.S.O. 1914, c. 178, s. 59.

Transfer valid only after entry.

62. No transfer of shares, unless made by sale under execution or under the order or judgment of a competent court, shall, until entry thereof has been duly made, be valid for any purpose whatever, save only as exhibiting the rights of the parties thereto towards each other, and, if absolute, as rendering the transferee and the transferor jointly and severally liable to the company and its creditors until entry thereof has been duly made in the books of the company. R.S.O. 1914, c. 178, s. 60.

Transferor may be notified.

63.—(1) The directors may, for the purpose of notifying the person registered therein as owner of such shares, refuse to allow the entry in any such books of a transfer of shares, and in that event shall forthwith give notice to the owner of the application for the entry of the transfer.

Owner may lodge caveat.

(2) Such owner may lodge a caveat against the entry of the transfer and thereupon such transfer shall not be made for a period of forty-eight hours.

Transfer may be entered if no order served.

(3) If, within one week from the giving of such notice or the expiration of the period of forty-eight hours, whichever shall last expire, no order of a competent court enjoining the entry of such transfer shall have been served upon the company the transfer may be entered.

Company not to be liable if section complied with.

(4) Where a transfer is entered after the proceedings mentioned in this section the company shall, in respect of the shares so transferred, be free from liability to a person

whose rights are purported to be transferred, but without prejudice to any claim which the transferor may have against the transferee. R.S.O. 1914, c. 178, s. 61.

64.—(1) The directors may call in and demand from the shareholders the amount unpaid on shares by them subscribed or held, at such times and places and in such payments or instalments as the special Act, the letters patent, supplementary letters patent, this Act, or the by-laws of the company require or allow; and interest shall accrue upon the amount of any unpaid call from the day appointed for payment of such call. Calling in instalments.

(2) The demand shall state that in the event of non-payment the shares in respect of which the call was made will be liable to be forfeited. Demand to state liability to forfeiture.

(3) If, after the demand, any call is not paid within the time and in the manner provided by the special Act, the letters patent, supplementary letters patent or the by-laws, the directors, by resolution to that effect reciting the facts and duly recorded in their minutes, may summarily forfeit any shares whereon such payment is not made; and the same shall thereupon become the property of the company and may be disposed of as, by by-law or otherwise, the company may ordain; but such forfeiture shall not relieve the shareholder of any liability to the company or to any creditor. R.S.O. 1914, c. 178, s. 62. Forfeiture of shares.

Share Warrants.

65. A company, if authorized so to do by the special Act, the letters patent or supplementary letters patent and subject to the provisions thereof, may, with respect to any share which is fully paid up, upon the deposit of the share certificate, if any, issue under its common seal a warrant, herein called a share warrant, stating that the bearer of the warrant is entitled to the share and may provide, by coupons or otherwise, for the payment of the future dividends on such share. R.S.O. 1914, c. 178, s. 63. Issue of share warrants.

66. A share warrant shall entitle the bearer to the shares specified in it and such shares may be transferred by the delivery of the share warrant. R.S.O. 1914, c. 178, s. 64. Rights of holders.

67. The bearer of a share warrant, subject to the provisions respecting share warrants contained in the letters patent or supplementary letters patent, shall be entitled, on surrendering such warrant for cancellation, to have his name entered as a shareholder in the register of shareholders, and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register of shareholders the name of any bearer of a share warrant in Surrender of share warrants.

respect of the shares specified therein without the share warrant being surrendered and cancelled. R.S.O. 1914, c. 178, s. 65.

How far
holders of
share
warrants
to be deemed
shareholders.

68. The bearer of a share warrant may, if the letters patent or supplementary letters patent so provide, be deemed to be a shareholder of the company, either to the full extent or for such purposes as may be thereby prescribed, but he shall not be qualified, in respect of the shares specified in such warrant, to be a director where the by-laws of the company provide that a director must be the holder of a specified number of shares. R.S.O. 1914, c. 178, s. 66.

Restrictions
on holders
of share
warrants.

69. Except as herein otherwise expressly provided no person shall, as a bearer of a share warrant, sign a requisition for calling a meeting of the company, or attend, or vote, or exercise any other privilege of a shareholder at a meeting of the company, or be entitled to receive any notices from the company; but the bearer of a share warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of shareholders as the holder of the shares included in the warrant, and he shall be a shareholder of the company. R.S.O. 1914, c. 178, s. 67.

Entries in
register
where share
warrant
issued.

70. On the issue of a share warrant in respect of any share the company shall strike out of its register of share holders the name of the shareholder then entered therein as holding such share as if he had ceased to be a shareholder and shall enter in the register

- (a) the fact of the issue of the warrant;
- (b) a statement of the shares included in the warrant;
- (c) the date of issue of the warrant. R.S.O. 1914, c. 178, s. 68.

Compliance
with s. 121.

71. Until the warrant is surrendered the above particulars shall be deemed to be the particulars which are required by section 121 to be entered in the register of shareholders; and on the surrender of a warrant the date of such surrender shall be entered as if it were the date at which a person ceased to be a shareholder. R.S.O. 1914, c. 178, s. 69,

Exercise of
privileges on
deposit of
share
warrants.

72.—(1) The bearer of a share warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited the depositor shall have the same right of signing a requisition for calling a meeting of the company and of attending and voting and exercising the other privileges of a shareholder at any meeting, held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of share-

holders as the holder of the shares included in the deposited warrant, and the company shall, on two days' written notice, return the deposited share warrant to the depositor.

(2) Not more than one person shall be recognized as Conditions. depositor of the share warrant. R.S.O. 1914, c. 178, s. 70.

73. The directors may make rules as to the terms on Lost share warrant. which a new share warrant or coupon may be issued in case of the defacement, loss or destruction of the original. R.S.O. 1914, c. 178, s. 71.

74.—(1) A company shall not be bound to see to the ex- Trusts. ecution of any trust, whether express, implied or constructive to which any share is subject.

(2) The receipt of the person in whose name the same Sufficient discharge. stands on the books of the company shall be a sufficient discharge to the company for any payment made in respect of such share, whether or not the company had notice of such trust.

(3) The company shall not be bound to see to the applica- Application of money paid. tion of the money paid upon such receipt. R.S.O. 1914, c. 178, s. 72.

75.—(1) An executor, administrator, guardian, trustee Trustees, etc., may vote. or committee of a lunatic and where a corporation is such executor, administrator, guardian, trustee or committee of a testator, intestate, infant, *cestui que trust*, or lunatic, any officer or employee of such corporation or any shareholder of the company duly appointed a proxy for such corporation, shall represent the shares in his hands at all meetings of the company and may vote accordingly as a shareholder, and every Mortgagor of stock may vote. person who mortgages or hypothecates his shares may nevertheless represent the same at all such meetings, and may vote accordingly as a shareholder unless, in the instrument creating the mortgage or hypothecation, he has expressly empowered the holder of such mortgage or hypothecation to vote thereon, Exceptions. in which case only such holder or his proxy may vote in respect of such shares. R.S.O. 1914, c. 178, s. 73 (1); 1924, c. 47, s. 5 (1).

(2) Subject to the by-laws, if shares are held jointly by two or more persons any one of them present at a meeting Joint holders of stock. may, in the absence of the other or others, vote thereon, but if more than one of them are present, or represented by proxy, they shall vote together on the shares jointly held. R.S.O. 1914, c. 178, s. 73 (2).

(3) Where a corporation is executor, administrator, guard- Corporation may vote as trustee, etc. ian, trustee or committee of a testator, intestate, infant, *cestui que trust* or lunatic, such corporation may appoint any of its officers, or employees, or a shareholder of the company, as

proxy to represent the shares at any such meeting and to vote accordingly as a shareholder. 1924, c. 47, s. 5 (2).

Liability of
shareholders.

76.—(1) Every shareholder, until the whole amount of his shares has been paid up, shall be individually liable to the creditors of the company to an amount equal to that not paid up thereon, but shall not be liable to an action therefor by any creditor before an execution against the company has been returned unsatisfied in whole or in part; and the amount due on such execution, but not beyond the amount so unpaid on his shares, shall be the amount recoverable against such shareholder.

Set-off.

(2) A shareholder may plead by way of defence, in whole or in part, any set-off which he could set up against the company, except a claim for unpaid dividend, or a salary or allowance as president or director of the company. R.S.O. 1914, c. 178, s. 74,

Shareholders
not liable
beyond un-
paid amount.

77. A shareholder shall not, as such, be answerable for any act, default or liability of the company, or for any engagement, claim, payment, loss, injury, transaction, matter or thing relating to or connected with the company beyond the amount unpaid on his shares. R.S.O. 1914, c. 178, s. 75.

Trustees
not person-
ally liable.

78.—(1) No person holding shares as executor, administrator, guardian, committee of a lunatic or trustee, of or for any estate, trust or person named in the books of the company as being so represented by him shall be personally subject to any liability as a shareholder, but the estates and funds in his hands shall be liable in like manner and to the same extent as the testator, intestate, ward, lunatic or person, interested therein would be if living and competent to act as the holder of such shares.

Liability of
beneficiary.

(2) If the trust is for a living person not under disability such person shall also be liable as a shareholder.

Where
beneficiary,
etc., not
named
trustee, etc.,
liable.

(3) If the testator, intestate, ward, lunatic or person so represented is not named in the books of the company the executor, administrator, guardian, committee or trustee shall be personally liable in respect of such shares as if he held them in his own name as owner thereof. R.S.O. 1914, c. 178, s. 76.

Mortgagees
prior to
foreclosure.

79. No person holding shares as collateral security shall, prior to foreclosure, be personally subject to liability as a shareholder, but the person transferring such shares as collateral security shall, until foreclosed, be considered as holding the same, and shall be liable as a shareholder in respect thereof. R.S.O. 1914, c. 178, s. 77,

PART V.

PREFERENCE AND DEBENTURE STOCK, DEBENTURES AND
MORTGAGES.

80.—(1) The directors of a corporation may make by-By-laws for laws for,—

- (a) borrowing money; Borrowing money.
- (b) issuing bonds, debentures, debenture stock, both Issuing securities. perpetual and terminable, or other securities;
- (c) pledging or selling such bonds, debentures or debenture stock, or other securities for such sum and Disposing of securities. at such prices as may be deemed expedient or be necessary.

(2) The directors of a company may make by-laws for,—By-laws for

- (a) creating and issuing any part of the capital as preference shares; Creating preference shares.
- (b) the conversion of preference shares into common Conversion of preference shares. shares or debentures or debenture stock, debentures into debenture stock or preference shares, or any class of shares or securities into any other class.

(3) Nothing in this section shall limit or restrict the power General power of borrowing not affected. of a corporation to borrow money on bills of exchange, promissory notes, bills of lading, warehouse receipts or other securities of a commercial nature issued in the ordinary course of business. R.S.O. 1914, c. 178, s. 78.

81. No by-law for any of the purposes mentioned in the next preceding section shall take effect until it has been confirmed by a vote of shareholders present, or represented by proxy and holding not less than two-thirds of the issued capital stock represented at the meeting or by a vote of two-thirds of the members so present or represented, as the case may be, at a general meeting duly called for considering the same. R.S.O. 1914, c. 178, s. 79. Confirming by-law.

82.—(1) A by-law for the creation and issue of preference shares or for the conversion of shares, debentures or debenture stock into preference shares may provide that the holders of such shares shall have such preference as regards dividends and repayment on dissolution or winding-up as may be therein set out, and the right to select a stated proportion of the board of directors, or such other control over the affairs of the company as may be considered expedient; or may limit the right of the holders thereof to specific dividends or control of the affairs of the company or otherwise, By-law for issue of preference shares.

not contrary to law or to this Act, and may provide for the purchase or redemption of such shares by the company as therein set out; but any term or provision of such by-law, whereby the rights of holders of such shares are limited or restricted, shall be fully set out in the certificate of such shares, and in the event of such limitations and restrictions not being so set out they shall not be deemed to qualify the rights of holders thereof. R.S.O. 1914, c. 178, s. 80 (1).

When confirmation by supplementary letters patent required.

(2) No such by-law which has the effect of increasing or decreasing the capital of the company, or increasing the amount of the preference stock authorized by the special Act, letters patent, supplementary letters patent, or any prior by-law of the company, or otherwise varying any term or provision thereof, shall be valid or acted upon until confirmed by supplementary letters patent. R.S.O. 1914, c. 178, s. 80 (2); 1916, c. 35, s. 4.

Consent of holders to redemption.

83. Unless preference shares, debenture stock, debentures or bonds are issued subject to redemption or conversion the same shall not be subject to redemption or conversion without the consent of the holders thereof. R.S.O. 1914, c. 178, s. 81.

Mortgages to secure debentures, etc.

84.—(1) The directors may charge, hypothecate, mortgage, or pledge any or all of the real or personal property, including books debts and unpaid calls, rights, powers, undertaking and franchises of the corporation to secure any bonds, debentures, debenture stock, or other securities, or any liability of the corporation.

Duplicate to be filed.

(2) A duplicate original of such charge, mortgage or other instrument of hypothecation or pledge made to secure such bonds, debentures or debenture stock or other securities shall be forthwith filed in the office of the Provincial Secretary as well as registered under the provisions of any other Act in that behalf. R.S.O. 1914, c. 178, s. 82.

Registration.

Exception.

(3) The next preceding subsection shall not apply to any mortgage filed with the Provincial Secretary under the provisions of *The Bills of Sale and Chattel Mortgage Act*. *New.*

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PART VI.

DIRECTORS AND THEIR POWERS, ETC.

First directors.

85. The persons named as provisional directors in the special Act or in the letters patent shall be the directors of the company until replaced by the same number of others duly elected in their stead by the shareholders in general meeting, which shall be held not later than six months after the coming into force of the special Act or the date of the letters patent, and they shall be eligible for election. R.S.O. 1914, c. 178, s. 83; 1916, c. 35, s. 5.

When election to be held.

86. The affairs of the company shall be managed by a board of not less than three directors who shall be elected by the shareholders in general meeting. R.S.O. 1914, c. 178, s. 84.

Board of directors.

87.—(1) Except as in this section provided no business of a company shall be transacted by its directors unless at a meeting of directors at which a quorum of the board shall be present.

Business must be transacted by quorum of board.

(2) Unless otherwise provided by the letters patent or supplementary letters patent a majority of the directors shall be necessary to constitute a quorum.

Majority to constitute quorum.

(3) So long as a quorum of directors remains in office vacancies in the board may be filled by such directors as remain in office.

Filling vacancies while there is a quorum.

(4) Whenever there is not a quorum of directors in office it shall be the duty of the remaining directors or director forthwith to call a meeting of the shareholders to fill the vacancies, and in default the meeting may be called by any shareholder.

Calling meeting when no quorum.

(5) If there are no directors remaining in office a meeting to elect directors may be called by any shareholder. R.S.O. 1914, c. 178, s. 85.

Calling meeting when no directors.

88.—(1) The shareholders of a company having more than six directors may, by a resolution passed by a vote of those present or represented by proxy and holding not less than two-thirds of the issued capital stock represented at a general meeting called for that purpose, authorize the directors to delegate any of their powers to an executive committee, consisting of not less than three, to be elected by the directors from their number.

Executive committee.

(2) A committee so formed shall, in the exercise of the powers so delegated, conform to any regulation that may be imposed upon them by such resolution or by the directors. R.S.O. 1914, c. 178, s. 86.

Committee subject to regulations.

89.—(1) Subject to the provisions of subsection 2, no person shall hold office as a director unless he is a shareholder absolutely in his own right and not in arrear in respect of any call, and where any director ceases to be such a shareholder he shall thereupon cease to be a director.

Qualification of directors.

(2) Any person holding shares, not in arrear in respect of any call, in trust as executor, administrator, guardian, trustee or committee of a testator, intestate, infant, *cestui que trust* or lunatic, may be elected a director and where any such director ceases to hold shares in trust he shall thereupon cease to be a director, and when a corporation holds such shares in trust as aforesaid any officer or officers of such corporation may be

Corporation as director.

elected as a director or directors and when such corporation ceases to hold such shares in trust any officer so elected shall thereupon cease to be a director.

Liability of
corporation
directors.

(3) A director elected under the provisions of subsection 2 shall not be personally liable under the provisions of section 100 of this Act, but the estate or other beneficial owner of the shares held in trust by such director or by the corporation of which such director is an officer shall be subject to all the liabilities imposed upon directors by section 100. 1924, c. 47, s. 6.

Election of
directors.

90. In the absence of other provisions in that behalf, in the letters patent or supplementary letters patent or by-laws of the company,

Yearly.

(a) the election of directors shall take place yearly, and all the directors then in office shall retire, but, if otherwise qualified, they shall be eligible for re-election;

By ballot.

(b) every election of directors shall be by ballot;

President,
vice-presi-
dent and
officers.

(c) the directors shall, from time to time, elect from among themselves a president and, if they see fit, a vice-president of the company; and may also appoint all other officers thereof. R.S.O. 1914, c. 178, s. 88.

Failure to
elect direc-
tors—how
remedied.

91. If an election of directors is not made, or does not take effect at the proper time, the company shall not thereby be dissolved; but the election may take place at any general meeting of the company duly called for that purpose; and the directors shall continue in office until their successors are duly elected. R.S.O. 1914, c. 178, s. 89.

Change by
by-law of
number or
quorum of
directors or
of head office
in Ontario.

92.—(1) A company may, by by-law, vary the number of its directors, but so that the number shall be not less than three, and may change the location of the head office in Ontario, and, if so authorized by the letters patent or supplementary letters patent, fix the quorum of the board. R.S.O. 1914, c. 178, s. 90 (1).

Chairman of
board of
directors.

(2) A company may by by-law provide for the election of a chairman of the board of directors, and define his duties and may assign to the chairman of the board of directors any or all of the duties of the president or other officer of the company as prescribed by this Act, and in that case the by-law shall fix and prescribe the duties of the president:

(a) When a by-law has been passed under the provisions of this subsection for the appointment of a chairman of the board of directors, this Act so far as it affects the company passing the by-law shall be read as if the chairman of the board of directors

had been named in the Act instead of the president, so far as the by-law transfers or assigns the duties of the president to the chairman of the board of directors. 1918, c. 20, s. 29.

(3) No such by-law shall take effect until confirmed by a By-law to be confirmed by shareholders. vote of shareholders present or represented by proxy at a meeting duly called for considering the same and holding not less than two-thirds of the issued capital stock represented at such meeting.

(4) A copy of the by-law certified under the seal of the Publication. company shall be forthwith filed in the office of the Provincial Secretary and published in the *Ontario Gazette*; and, in case of the removal of the head office, twice in a newspaper published in the place where the head office was located and also twice in a newspaper published in the place to which the head office is to be removed or as near thereto as may be. R.S.O. 1914, c. 178, s. 90 (2, 3).

93.—(1) The directors may pass by-laws, not contrary to By-laws. law or to the letters patent or supplementary letters patent or to this Act, to regulate,—

- (a) the allotment of shares; the making of calls there- Shares.
on; the payment thereof; the issue and registra-
tion of certificates of shares; the forfeiture of
shares for non-payment; the disposal of forfeited
shares and of the proceeds thereof; the transfer
of shares;
- (b) the declaration and payment of dividends; Dividends.
- (c) the amount of the share qualification of the direc- Directors'
tors and the remuneration of the directors and services, etc.
of the president and vice-president;
- (d) the time at which and place where the meetings of Meetings.
the company shall be held; the calling of meet-
ings of the company; and the procedure in all
things at such meetings; and except as provided
by section 53 of the requirements as to proxies;
- (e) the conduct in all other particulars of the affairs of Miscellaneous.
the company.

(2) Subject to the provisions of subsection 3 every such Confirmation of by-laws. by-law and every repeal, amendment or re-enactment there-
of, unless in the meantime confirmed at a general meeting
of the company duly called for that purpose, shall have
force only until the next annual meeting of the company;
and in default of confirmation thereat shall, at and from that
time, cease to have force; and in that case no new by-law to
the same or the like effect or re-enactment thereof shall

have any force until confirmed at a general meeting of the company.

By-laws may be varied.

(3) The company may, either at a general meeting called for that purpose or at the annual meeting, repeal, amend, vary or otherwise deal with any by-law passed by the directors, but no act done or right acquired under any by-law shall be prejudicially affected by any such repeal, amendment, variation or other dealing. R.S.O. 1914, c. 178, s. 91.

Payments to president or directors.

94. No by-law for the payment of the president or of any director shall be valid or acted upon unless passed at a general meeting, or, if passed by the directors, until the same has been confirmed at a general meeting. R.S.O. 1914, c. 178, s. 92.

Directors not to vote on contracts in which they have a personal interest, etc.

95.—(1) No director shall at any directors' meeting vote in respect of any contract or arrangement made or proposed to be entered into with the company in which he is interested either as vendor, purchaser or otherwise.

No liability where interest disclosed, and refrains from voting.

(2) A director who may be in any way interested in any contract or arrangement proposed to be made with the company shall disclose the nature of his interest at the meeting of the directors at which such contract or arrangement is determined on, if his interest then exists, or in any other case at the first meeting of the directors after the acquisition of his interest, and if he discloses the nature of his interest, and refrains from voting, he shall not be accountable to the company by reason of the fiduciary relationship existing for any profit realized by such contract or arrangement; but no director shall be deemed to be in any way interested in any contract or arrangement, nor shall he be disqualified from voting or be held liable to account to the company by reason of his holding shares in any other company with which a contract or arrangement is made or contemplated.

Proviso.

(3) This section shall not apply to any contract by or on behalf of a company to give the directors or any of them security by way of indemnity. R.S.O. 1914, c. 178, s. 93.

Not to purchase shares of other corporations unless authorized by by-law.

96.—(1) The company although authorized by the special Act, letters patent or supplementary letters patent, or by this Act to purchase shares in any other corporation shall not do so or use any of its funds for such purpose until the directors have been expressly authorized by a by-law passed by them for the purpose, and confirmed by a vote of shareholders present or represented by proxy at a general meeting duly called for that purpose and holding not less than two-thirds of the issued capital stock represented at such meeting.

Not to apply to company dealing in shares.

(2) This section shall not apply to a company incorporated for the purpose of carrying on the business of buying, selling or dealing in shares. R.S.O. 1914, c. 178, s. 94.

97.—(1) The directors shall not declare or pay any dividend or bonus when the company is insolvent, or any dividend or bonus the payment of which renders the company insolvent or diminishes the capital thereof; but if any director, present when such dividend or bonus is declared, forthwith, or if any director then absent, within twenty-four hours after he has become aware thereof, and able so to do, enters his written protest against the same, and within eight days thereafter causes such protest to be notified by registered letter to the Provincial Secretary, such director may thereby, and not otherwise, exonerate himself from liability.

Liability of directors declaring a dividend when company is insolvent, etc.

How a director may avoid such liability.

(2) Nothing in this section shall prevent a mining company or a company whose assets are of a wasting character from declaring or paying dividends out of its funds derived from the operations of the company.

Case of companies with wasting assets.

(3) The powers conferred by subsection 2 may be exercised notwithstanding that the value of the net assets of the company may be thereby reduced to less than the par value of the issued capital stock of the company if the payment of the dividends does not reduce the value of its remaining assets so that they will be insufficient to meet all the liabilities of the company exclusive of its nominal paid-up capital.

How far capital may be impaired.

(4) A dividend may be paid by any such company distributing in specie or in kind assets of the company not exceeding in value the amount of the dividend.

Dividends, how payable.

(5) The powers conferred by subsection 2 shall not be exercised by any such company unless under the authority of a by-law passed by the directors and confirmed at a general meeting duly called for the purpose of considering the same by a vote of the shareholders present or represented by proxy and holding not less than two-thirds of the issued capital stock represented at such meeting.

Approval of shareholders.

(6) Where dividends have already been paid by such a company in any of the cases mentioned in subsection 2, the payment thereof shall be deemed valid if a by-law adopting and approving the same is passed by the directors and approved by vote of the shareholders in the manner mentioned in subsection 5. R.S.O. 1914, c. 178, s. 95.

Validity of payments.

98.—(1) For the amount of any dividend which the directors may lawfully declare payable in money, they may, subject to the approval in the following subsection mentioned, declare a stock dividend and issue therefor shares of the company as fully paid or partly paid, or may credit the amount of such dividend on the shares of the company already issued

Stock dividends.

but not fully paid, and the liability of the holders of such shares shall be reduced by the amount of such dividend. R.S.O. 1914, c. 178, s. 96 (1); 1919, c. 41, s. 3.

Stock dividend to have no effect until confirmed by shareholders.

(2) No declaration of stock dividend as aforesaid shall have any effect, unless and until such declaration shall have been confirmed by a vote of the shareholders present or represented by proxy, at a general meeting duly called for considering the same and holding not less than two-thirds of the issued capital stock represented at such meeting. 1919, c. 41, s. 3.

No loan by company to shareholders.

99. No loan shall be made by the company to any shareholder, and if such a loan is made all directors and other officers of the company making the same and in any wise assenting thereto shall be jointly and severally liable to the company for the amount thereof, and also to third parties to the extent of such loan with interest, for all debts of the company contracted from the time of the making of the loan to that of the repayment thereof. R.S.O. 1914, c. 178, s. 97.

Liability of directors for wages.

100.—(1) The directors of the company shall be jointly and severally liable to the labourers, servants and apprentices thereof for all debts not exceeding one year's wages due for services performed for the company while they are such directors respectively.

No liability until

(2) A director shall not be liable under subsection 1 unless,—

Company sued, etc.

(a) the company has been sued for the debt within one year after it has become due and execution has been returned unsatisfied in whole or in part; or

Company in liquidation, etc.

(b) the company has, within that period, gone into liquidation or has been ordered to be wound up and the claim for such debt has been duly filed and proved,

Unless sued while director, etc.

nor unless he is sued for such debt while a director or within one year after he has ceased to be a director.

Liability for amount unsatisfied on execution.

(3) If execution has so issued the amount recoverable against the director shall be the amount remaining unsatisfied on the execution.

On payment director entitled to assignment of judgment, etc.

(4) If the claim for such debt has been proved in liquidation or winding-up proceedings a director, upon payment of the debt, shall be entitled to any preference which the creditor paid would have been entitled to, and where a judgment has been recovered he shall be entitled to an assignment of the judgment. R.S.O. 1914, c. 178, s. 98.

PART VII.

PROSPECTUS AND DIRECTORS' LIABILITY.

101.—(1) In this Part,

Interpretation.

- (a) "Company" shall include a company proposed to be incorporated;
- (b) "Prospectus" shall mean any prospectus, notice, circular, advertisement or other invitation offering for subscription or purchase any shares, debentures, debenture stock or other securities of a company, or published or issued for the purpose of being used to promote or aid in the subscription or purchase of such shares, debentures, debenture stock or securities.

(2) This Part, except section 104, shall apply to every company, whether formed before or after the commencement of this Act, which offers to the public for subscription shares, debentures, debenture stock or other securities and to every company, whether incorporated under the law of Ontario or otherwise, the shares, debentures, debenture stock or other securities of which are dealt in within Ontario.

(3) Where a company or any of its officers, agents or brokers, or any person employed or authorized by it for that purpose, directly or indirectly invites or solicits either orally or by a prospectus, or any other means, any other person to apply or subscribe for or to buy or otherwise acquire any shares, debentures, debenture stock or other securities of the company, or where any person who has subscribed for or underwritten or to whom has been allotted the whole or the major part of any issue of the company's shares, debentures, debenture stock or other securities so invites or solicits any person to apply or subscribe for or to buy or otherwise acquire any of such last mentioned shares, debentures, or debenture stock, the company shall be deemed to offer to the public for subscription within the meaning of this Act, its shares, debentures, debenture stock or other securities. R.S.O. 1914, c. 178, s. 99.

102.—(1) Upon any offer of shares to the public for subscription a company may pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such shares, if the payment of the commission and the amount or rate of the commission paid or agreed to be paid are authorized by the

letters patent or supplementary letters patent and disclosed in the prospectus, and the commission paid or agreed to be paid does not exceed the amount or rate so authorized.

Capital not to be applied in paying commissions except as authorized.

(2) Except as provided by subsection 1 no company shall apply any of its shares or capital, either directly or indirectly, in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally for any shares of the company or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such shares, whether the shares or capital be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or be paid out of the nominal purchase money or contract price or otherwise.

Brokerage may be paid.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay. R.S.O. 1914, c. 178, s. 100.

What companies must file prospectus.

103.—(1) Every public company before offering to the public for subscription shares, debentures, debenture stock or other securities shall issue a prospectus as hereinafter set out.

Purchases, subscriptions, etc., deemed to be induced by prospectus

(2) All purchases, subscriptions or other acquisitions of shares, debentures, debenture stock or other securities of any company required to file a prospectus or a statement in lieu of a prospectus, shall be deemed, as against the company and the signatories to the prospectus or statement, to be induced by such prospectus or statement, any term, proviso or condition thereof to the contrary notwithstanding.

Delivery of copy of prospectus or statement before subscription.

(3) A subscription for shares, debentures or debenture stock shall not be binding on the subscriber unless at or before the subscription there is delivered to him a copy of the prospectus, if any, issued by the company, or if a prospectus has not been issued a copy of the statement mentioned in section 104.

Subscriber after notice must elect to withdraw.

(4) The subscriber to be entitled to the benefit of subsection 3 must elect to withdraw his subscription before or within ten days after notice of the allotment to him of the shares, debentures, or debenture stock for which he has subscribed. R.S.O. 1914, c. 178, s. 101.

Statement in lieu of prospectus.

104.—(1) A company which does not issue a prospectus on or with reference to its formation shall not allot any of its shares, debentures or debenture stock unless, before the first allotment, there has been filed with the Provincial Secretary, in lieu of a prospectus, a statement, Form 5, signed by every person who is named therein as a director or proposed director of the company or by his agent authorized in writing.

(2) This section shall not apply to a private company ^{Not to apply to private company.} or to shares subscribed for by the petitioners for the letters patent before the issue thereof. R.S.O. 1914, c. 178, s. 102.

105.—(1) Every prospectus issued by or on behalf of a company shall be dated, and the date shall, unless the contrary is proved, be taken as the date of issue of the prospectus. ^{Date of prospectus.}

(2) A copy of every such prospectus shall be signed by every person who is named therein as a director or proposed director or provisional director of the company, or by his agent authorized in writing, and shall, together with the authority in writing verified by affidavit, be filed with the Provincial Secretary before its issue. ^{Prospectus to be signed and filed.}

(3) The Provincial Secretary shall not receive or file any prospectus unless it is so dated and signed. ^{Not to be filed until signed, etc.}

(4) No prospectus shall be issued until so filed, and every prospectus shall state on the face of it that it has been so filed. ^{Not to be issued until filed.} R.S.O. 1914, c. 178, s. 103.

106.—(1) Every prospectus issued by or on behalf of a company or by or on behalf of any person who is or has been engaged or interested in the formation or promotion of the company, shall state— ^{What to be disclosed in prospectus.}

(a) the names, descriptions and addresses of the original incorporators, and the number of shares subscribed for by them respectively; ^{Particulars as to incorporators.}

(b) the number of shares, if any, fixed as the qualification of a director, and any provision in the by-laws of the company as to the remuneration of the directors; ^{Qualification and remuneration of directors.}

(c) the names, descriptions and addresses of the directors or proposed directors; ^{Directors.}

(d) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and on allotment on each share; and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the next preceding two years, and the amount actually allotted and the amount, if any, paid on the shares so allotted; ^{Subscription upon which allotment may proceed.}

(e) the time or times at which, under the by-laws of the company, a further call or calls may be made upon shares subscribed for; ^{Time of calls.}

Shares and
bonds allotted
for other than
cash con-
sideration.

(f) the number and amount of shares, debentures and debenture stock which within the next preceding two years have been issued or agreed to be issued, as fully or partly paid for, otherwise than in cash, and in the latter case the extent to which they are so paid for, and in either case the consideration for which those shares, debentures or debenture stock have been issued or are proposed or intended to be issued;

Vendors of
property to
company.

(g) the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus and the amount payable in cash, shares, debentures, debenture stock or other securities to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor, but where the vendors or any of them are a firm the members of the firm shall not be treated as separate vendors;

Consideration
for purchase.

(h) the amount, if any, paid or payable as purchase money in cash, shares, debentures, or debenture stock, or other securities, for any such property, specifying the amount, if any, payable for goodwill;

Commissions.

(i) the amount, if any, paid within the next preceding two years or payable as commission for subscribing, or agreeing to subscribe, or procuring or agreeing to procure subscriptions for any shares in the company, or for underwriting or procuring underwriting of any securities issued or to be issued by the company or the rate of any such commission;

Preliminary
expenses.

(j) the amount or estimated amount of preliminary expenses;

Promoter's
remuneration.

(k) the amount paid within the next preceding three years or intended to be paid in cash, shares, debentures, debenture stock or other securities, to any promoter and the consideration for any such payment;

Particulars
as to material
contracts.

(l) the date of and parties to every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into

more than three years before the date of issue of the prospectus, and a reasonable time and place at which such material contract or a copy thereof may be inspected;

- (m) the names and addresses of the auditors, if any, Names, etc. of auditors. of the company;
- (n) full particulars of the nature and extent of the interest, if any, of every director in the promotion of or in the property proposed to be acquired by the company, or where the interest of such director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares by any person either to induce him to become, or to qualify him as a director or otherwise for services rendered by him in connection with the promotion or formation of the company. Interest of directors in property taken by company.

(2) For the purposes of this section the word "vendor," "Vendor," what to include. shall extend to and include a person who has entered into any contract, absolute or conditional, for the sale or purchase or for any option of purchase, of any property to be acquired by the company where

- (a) the purchase money is not fully paid at the date of issue of the prospectus; or
- (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or
- (c) the contract depends for its validity or fulfilment on the result of such issue.

(3) Where any of the property to be acquired by the company is to be taken on lease, this section shall apply as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease and the rent, and the expression "sub-purchaser" included a sub-lessee. When "vendor" includes "lessor."

(4) The requirements as to the original incorporators and the qualification, remuneration, and interest of directors, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus issued more than one year after the date of the first general meeting. Case of prospectus issued more than one year after first general meeting.

(5) In the case of a prospectus issued more than one year after the date of such meeting the obligation to disclose all material contracts shall be limited to a period of two years next preceding the issue of the prospectus. Obligation to disclose material contracts limited.

When prospectus advertised in newspapers.

(6) Where the prospectus is published in a newspaper it shall not be necessary to specify in the advertisement the names of the original incorporators and the number of shares subscribed for by them.

Application of section.

(7) This section shall not apply to a circular or notice inviting existing shareholders or debenture holders, or debenture stock holders of a company to subscribe for further shares, debentures or debenture stock; but, except as hereinbefore provided, this section shall apply to any prospectus whether issued on or with reference to the formation of a company or subsequently.

Waiver of compliance with section to be void.

(8) Any condition requiring or binding any applicant for shares or debentures or debenture stock, to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void. R.S.O. 1914, c. 178, s. 104.

Penalty.

107.—(1) Every provisional director, director or other person responsible for the issue of a prospectus for every violation of any of the provisions of the next preceding four sections shall incur a penalty not exceeding \$200, unless

Exceptions.

- (a) as regards any matter not disclosed, he was not cognizant thereof; or
- (b) the non-compliance arose from an honest mistake of fact on his part;
- (c) in the case of non-compliance with the requirements of paragraph *n* of subsection 1 of section 106 it is proved that he had no knowledge of the matters not disclosed.

Liability under general law not affected.

(2) Nothing in this section or the next preceding four sections shall limit or diminish any liability which any person may incur under the general law apart from this Act. R.S.O. 1914, c. 178, s. 105.

Capital to be correctly stated in advertisements, etc.

108.—(1) Where any advertisement, letter-head, account or document issued or published by any corporation or any of its officers, agents or employees purports to state the capital of the corporation, unless it is stated to be the authorized capital, then the capital actually and in good faith subscribed and no more shall be so stated.

Penalty.

(2) Any such corporation, officer, agent or employee who causes to be inserted an advertisement or who publishes, issues or causes to be published or issued any advertisement, letter-head, account or document which states the capital, otherwise than as mentioned in subsection 1, or which contains any false statement as to the incorporation, control, supervision, management or financial standing of such cor-

poration shall incur a penalty of not less than \$50 nor more than \$200. R.S.O. 1914, c. 178, s. 106.

109.—(1) Where a prospectus or notice invites subscriptions for shares in, debentures, debenture stock or other securities of a company, every person who is a director of the company at the time of the issue of the prospectus or notice, and every person who having authorized such naming of him is named in the prospectus or notice as a director of the company, or as having agreed to become a director of the company, either immediately or after an interval of time, and every promoter of the company and every person who has authorized the issue of the prospectus or notice, shall be liable to pay compensation to all persons who subscribe for any shares, debentures, debenture stock or other securities on the faith of such prospectus or notice for the loss or damage they may have sustained by reason of any untrue statement in the prospectus or notice, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved that

Liability for
statements in
prospectus.

Exceptions.

- (a) having consented to become a director of the company he withdrew his consent before the issue of the prospectus or notice, and that the prospectus or notice was issued without his authority or consent; or
- (b) the prospectus or notice was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was so issued; or
- (c) after the issue of such prospectus or notice and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of such withdrawal and of the reason therefor; or
- (d) with respect to every untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement was true; or
- (e) with respect to every untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, but the director, person named as director, promoter, or

person who authorized the issue of the prospectus, shall be liable to pay compensation as aforesaid, if it is proved that he had no reasonable ground to believe that the person making the statement, report or valuation was competent to make it; or

- (f) with respect to every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document.

Who to be deemed a promoter.

(2) A promoter in this section shall mean a promoter who was a party to the preparation of the prospectus or notice, or of the portion thereof containing such untrue statement, but shall not include any person by reason of his acting solely in a professional capacity for persons engaged in procuring the formation of the company. R.S.O. 1914, c. 178, s. 107.

Statements in prospectus for raising further capital.

110. Where a company which has issued shares, debentures, debenture stock or other securities is desirous of obtaining further capital by subscriptions for shares, debentures, debenture stock or other securities, and for that purpose issues a prospectus or notice, no director of such company shall be liable in respect of any statement therein unless he authorized the issue of such prospectus or notice or adopted or ratified it. R.S.O. 1914, c. 178, s. 108.

Indemnity where name of person has been improperly inserted.

111. Where any such prospectus or notice contains the name of a person as a director of a company, or as having agreed to become a director thereof, and such person has not consented to become a director, or has withdrawn his consent before the issue of such prospectus or notice, and has not authorized or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus or notice was issued, and any other person who authorized the issue of such prospectus or notice shall be liable to indemnify the person named as director of the company, or as having agreed to become a director thereof, against all damages, costs, charges and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or notice, or in defending himself against any action or legal proceedings brought against him in respect thereof. R.S.O. 1914, c. 178, s. 109.

Contribution from co-director.

112. Every person who by reason of his being a director or named as a director, or as having agreed to become a director, or of his having authorized the issue of the prospectus or notice, has become liable to make any payment under the provisions of this Act shall be entitled to recover contribu-

tion, as in cases of contract from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of a fraudulent misrepresentation. R.S.O. 1914, c. 178, s. 110.

PART VIII.

PUBLIC COMPANIES.

113. This part shall apply to all public companies except those which do not offer shares, debentures or debenture stock to the public for subscription. R.S.O. 1914, c. 178, s. 111. Application of Part VIII.

114.—(1) No allotment shall be made of any share capital offered to the public for subscription unless Restrictions on allotment.

(a) the amount, if any, named in the prospectus as the minimum subscription upon which the directors may proceed to allotment; or,

(b) if no amount is so named the whole amount of the share capital so offered for subscription

has been subscribed, and the sum payable on application for the amount so named, or for the whole amount offered for subscription has been paid to and received by the company.

(2) The amount so named and the whole amount shall be reckoned exclusively of any amount payable otherwise than in cash, and is in this Act referred to as the minimum subscription. Minimum subscription.

(3) The amount payable on application on each share shall not be less than five per centum of the nominal amount of the share. Amount payable on application.

(4) If such conditions have not been complied with on the expiration of ninety days after the first issue of the prospectus all money received from applicants for shares shall be forthwith repaid to them without interest, and if any such money is not so repaid within one hundred days after the issue of the prospectus the directors of the company shall be jointly and severally liable to repay that money with interest from the expiration of the ninety days, but a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part. Repayment where conditions not complied with.

(5) The Provincial Secretary may extend the times by this section limited. Extension of time.

(6) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void. Condition as to waiving compliance void.

Application
of section.

(7) This section, except subsection 3, shall not apply to any allotment of shares subsequent to the first allotment of shares offered by a public company. R.S.O. 1914, c. 178, s. 112.

Effect of
irregular
allotment.

115.—(1) An allotment made by a company to an applicant in contravention of the foregoing provisions of this Part shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

Director to
compensate
company and
allottee.

(2) If any director of a company knowingly contravenes or permits or authorizes the contravention of any of the foregoing provisions of this Part with respect to allotment he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby.

Proceedings
to be com-
menced
within two
years.

(3) No action shall be brought to recover such loss, damages or costs after the expiration of two years from the date of the allotment. R.S.O. 1914, c. 178, s. 113.

Restrictions
on commence-
ment of
business.

116.—(1) A company shall not commence any business or exercise any borrowing powers unless,

(a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and,

(b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered by a public company; and,

(c) there has been filed with the Provincial Secretary a statutory declaration by the secretary or one of the directors in the prescribed form that such conditions have been complied with and the Provincial Secretary has certified as provided by subsection 2;

provided that where money has heretofore been or is hereafter advanced in good faith by way of mortgage or upon any other security or obligation to or for the use or benefit of a company which had not at the time of such advance taken out such certificate, nothing in this section shall affect or be deemed to have affected the right of the person making such advance or of his assignee or personal representative to enforce payment of the mortgage or other security or obligation held by him in respect of such advance. R.S.O. 1914, c. 178, s. 114 (1); 1924, c. 47, s. 11 (1).

Certificate
absence of
not to preju-
dice *bona fide*
creditors.

(2) The Provincial Secretary may, on the filing of the statutory declaration, certify that the company is entitled to commence business, and the certificate shall be conclusive evidence that the company is so entitled, but upon it being shown that the certificate was made upon any false statement or upon the withholding of any material statement the Provincial Secretary may cancel and annul such certificate.

Certificate that company may commence business.

Cancellation of certificate

(3) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

Effect of contracts previously made.

(4) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares, debentures, or debenture stock or the receipt of any money payable on any application.

Simultaneous offer of shares and debentures.

(5) If any company commences business or exercises borrowing powers in contravention of this section every person who is responsible for the contravention shall, without prejudice to any other liability, incur a penalty not exceeding \$50 for every day during which the contravention continues.

Penalty for commencing business before proper time.

(6) Where a company has commenced business without having complied with the requirements of subsection 1 of section 108 of *The Ontario Companies Act, 1907*, and the Lieutenant-Governor in Council is satisfied that the non-compliance was due to inadvertence, error or mistake, and that before commencing business the conditions mentioned in clauses (a) and (b) of that section had been complied with, he may authorize the company to file the statutory declaration *nunc pro tunc*, and if it is filed within one month after the date of the Order in Council it shall have the same effect as if it had been filed before the company commenced business. R.S.O. 1914, c. 178, s. 114 (2-6).

Innocent non-compliance with 7 Edw. VII. c. 34, s. 108.

117. All sums received by the company or by any promoter, director, officer or agent thereof shall be held in trust by the company or such promoter, director, officer or agent until deposited in a chartered bank to the credit of the company and shall be so deposited and there remain in trust until the issue of the certificate by the Provincial Secretary. R.S.O. 1914, c. 178, s. 115.

Moneys to be held in trust.

118.—(1) Where a company makes any allotment of its shares it shall, within two months thereafter, file with the Provincial Secretary,—

Return of allotments.

- (a) a return of the allotments, stating whether common or preference, the date of such allotment, and the number and nominal amount of the shares comprised in each allotment, the names, addresses and descriptions of the allottees, and the amount, if any, paid or due and payable on each share; and

- (b) in the case of shares allotted in whole or in part for a consideration other than cash, a contract in writing or notarial copy thereof, constituting the title of the allottee to such allotment, together with any contract of sale, or for services or other consideration in respect of which such allotment was made and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted. R.S.O. 1914, c. 178, s. 116 (1); 1924, c. 47, s. 7; 1926, c. 48, s. 4.

Penalty for default.

- (2) If default is made in complying with the requirements of this section every director, manager, secretary or other officer of the company who is knowingly a party to the default shall incur a penalty not exceeding \$50 for every day during which the default continues. R.S.O. 1914, c. 178, s. 116 (2).

Statutory meetings.

- 119.**—(1) Every company shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of its shareholders, which shall be called the statutory meeting.

[As to notice of meetings, see section 46.]

Report to be sent to shareholders.

- (2) The directors shall, at least ten days before the day on which the meeting is to be held, send to every shareholder a report certified by not less than two directors stating,—

- (a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;
- (b) the total amount of cash received by the company in respect of such shares so distinguished;
- (c) an abstract of the receipts and payments of the company on capital account to the date of the report, and an account or estimate of the preliminary expenses of the company;
- (d) the names, addresses and descriptions of the directors, auditors, if any, manager, if any, and secretary of the company; and
- (e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(3) The report, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, shall be certified as correct by the auditors, if any, of the company.

Report to be certified by auditors.

(4) The directors shall cause a copy of the report so certified to be filed with the Provincial Secretary forthwith after the sending thereof to the shareholders.

Report to be filed with Provincial Secretary.

(5) The directors shall cause a list showing the names, descriptions and addresses of the shareholders and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any shareholder during the continuance of the meeting.

Lists of shareholders to be produced at meeting.

(6) The shareholders present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the report, whether previous notice has or has not been given, but no resolution of which notice has not been duly given may be passed.

Shareholders may discuss business of company at meeting.

(7) The meeting may be adjourned from time to time, and at an adjourned meeting any resolution of which notice has been duly given, either before or subsequently to the former meeting, may be passed, and at the adjourned meeting the same powers may be exercised as at an original meeting.

Adjournments.

(8) If default is made in filing such report or in holding the statutory meeting, then at the expiration of fourteen days after the last day on which the meeting ought to have been held any shareholder may apply to the Court for the winding up of the company, and the Court may either direct that the company be wound up or give directions for the report being filed or a meeting being held, or make such other order as may be deemed just, and may order that the costs of the application be paid by any person who, in the opinion of the Court, is responsible for the default. R.S.O. 1914, c. 178, s. 117.

Application to Court if default made in holding meeting.

120. Where a company incorporated to establish, maintain and conduct a cheese and butter factory and having an authorized capital of ten thousand dollars or less, has commenced business without having complied with the requirements of sections 114, 116, 118 and 119 of this Act, or any of them, and the Lieutenant-Governor is satisfied that the non-compliance was due to inadvertence, error or mistake, and that the said requirements have since been complied with as far as practicable he may grant a certificate that the said requirements have been sufficiently complied with, and such certificate shall relieve the company and the directors from liability under this Act, for non-compliance with the said requirements. 1919, c. 41, s. 4.

Cheese and butter factories.

PART IX.

BOOKS, INSPECTION AND AUDITORS.

Record books
to be kept
and contents.

121. The corporation shall cause the secretary, or some other officer specially charged with that duty, to keep a book or books wherein shall be kept recorded,—

- (a) a copy of the letters patent and of any supplementary letters patent issued to the corporation and, if incorporated by special Act, a copy of such Act, and the by-laws of the corporation duly authenticated;
- (b) the names, alphabetically arranged, of all persons who are or who have been shareholders or members of the corporation;
- (c) the post office address and calling of every such person while such shareholder or member;
- (d) the names, post office addresses and callings of all persons who are or have been directors of the corporation, with the date at which each person became or ceased to be such a director;

And in the case of a corporation having share capital—

- (e) the number of shares held by each shareholder;
- (f) the amounts paid in, and remaining unpaid respectively, on the shares of each shareholder;
- (g) the date and other particulars of all transfers of shares in their order. R.S.O. 1914, c. 178, s. 118.

Books to be
kept at
head office.

122.—(1) The books mentioned in the next preceding section and in section 127, shall be kept at the head office of the corporation within Ontario, whether the company is permitted to hold its meetings out of Ontario or not.

Penalty for
removal.

(2) Any director, officer or employee of a corporation who removes or assists in removing such books from Ontario or who otherwise contravenes the provisions of this section shall incur a penalty of \$200.

Proviso.

(3) Upon necessity therefor being shown and adequate assurance given that such books may be inspected within Ontario by any person entitled thereto after application for such inspection to the Provincial Secretary the Lieutenant-Governor in Council may relieve any corporation permitted to hold its meetings out of Ontario from the provisions of this section upon such terms as he may see fit. R.S.O. 1914, c. 178, s. 119.

123.—(1) No director, officer or employee of the corporation shall knowingly make or assist in making any untrue entry in any of its books, or refuse or neglect to make any proper entry therein. Untrue entries.

(2) Any person wilfully violating the provisions of this section shall be liable in damages for all loss or injury which any person interested may have sustained thereby. Penalty.
R.S.O. 1914, c. 178, s. 120.

124.—(1) If the name of any person is, without sufficient cause, entered in or omitted from any such book, or if default is made or unnecessary delay takes place in entering therein the fact of any person having ceased to be a shareholder or member of the corporation, the person or shareholder or member aggrieved, or any shareholder or member of the corporation, or the corporation itself, may apply to the Supreme Court, for an order that the book or books be rectified, and the Court may either refuse such application or may make an order for the rectification of the book, and may direct the corporation to pay any damages the party aggrieved may have sustained. Powers of Judge as to entries in, omissions from and rectification of books.

(2) The Court may, in any proceeding under this section, decide any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from such books, whether such question arises between two or more shareholders, or alleged shareholders, or members, or between any shareholder or alleged shareholder or member and the corporation, and the Court may in any such proceeding decide any question which it may be necessary or expedient to decide for the rectification of the books. Decision as to title.

(3) The Court may direct an issue to be tried. Trial of issue.

(4) An appeal shall lie from the decision of the Court as if the same had been given in an action. Appeal.

(5) This section shall not deprive any Court of any jurisdiction it may otherwise have. Jurisdiction of Courts not affected.

(6) The costs of any proceeding under this section shall be in the discretion of the Court. R.S.O. 1914, c. 178, s. 121. Costs.

125.—(1) The books mentioned in section 121 shall, during reasonable business hours of every day, except holidays, be kept open for the inspection of shareholders, members and creditors of the corporation and their personal representatives or agents, at the head office or chief place of carrying on its undertaking, and every such shareholder, member, creditor, agent or representative, may make extracts therefrom. Books to be open for inspection.

(2) Any director or officer who refuses to permit any person entitled thereto to inspect such books, or make extracts therefrom, shall incur a penalty not exceeding \$100. R.S.O. 1914, c. 178, s. 122. Liability for refusal to allow inspection of books.

Books to be
prima facie
evidence.

126. Such books shall be *prima facie* evidence of all facts purporting to be therein stated in any action or proceeding against the corporation or against any shareholder or member. R.S.O. 1914, c. 178, s. 123.

Books of
account to
be kept.

127. The directors shall cause proper books of account to be kept containing full and true statements of,—

(a) the financial transactions of the corporation;

(b) the assets of the corporation;

(c) the sums of money received and expended by the corporation, and the matters in respect of which such receipt or expenditure took place;

(d) the credits and liabilities of the corporation; and

And minute
books.

a book or books containing minutes of all the proceedings and votes of the corporation, or of the board of directors, respectively, verified by the signature of the president or other presiding officer of the corporation. R.S.O. 1914, c. 178, s. 124.

False returns,
etc.

128. If any person in any return, report, certificate, balance-sheet or other document required by or for the purposes of this Act wilfully makes a statement false in any material particular he shall be liable to imprisonment for a term not exceeding three months, and shall incur a penalty not exceeding \$100 in lieu of or in addition to such imprisonment. R.S.O. 1914, c. 178, s. 125.

Penalty.

The Court
may appoint
an inspector
to make
investigation.

129.—(1) Upon an application by not less than one-fifth in value of the shareholders of a corporation with share capital, or one-fifth in number of the members of a corporation without share capital, the Supreme Court may appoint an inspector to investigate its affairs and management.

Report on
and expense of
investigation.

(2) Such inspector shall report thereon to the Court, and the expense of such investigation shall, in the discretion of the Court, be defrayed by the corporation or by the applicants, or partly by the corporation and partly by the applicants.

Security for
costs.

(3) The Court may require the applicants to give security to cover the probable cost of the investigation, and may make rules and prescribe the manner in which and the extent to which the investigation shall be conducted.

Corporation
may appoint
for same
purpose.

(4) A corporation may, by resolution passed at the annual meeting, or at a special general meeting called for that purpose, appoint an inspector to examine into the affairs of the corporation.

Powers and
duties of
inspector.

(5) The inspector so appointed shall have the same powers and perform the same duties as an inspector appointed by the Supreme Court, and he shall make his report in such

manner and to such persons as the corporation by resolution directs.

(6) All officers and agents of the corporation shall produce for the examination of any inspector appointed under this section all books and documents in their custody or power. Production of books and documents.

(7) Any such inspector may examine upon oath the officers, agents and employees of the corporation in relation to its business. Examination on oath.

(8) If any officer or agent refuses to produce any such book or document, or if any person so examined refuses to answer any question relating to the affairs of the corporation, he shall incur a penalty not exceeding \$20 for each offence. R.S.O. 1914, c. 178, s. 126. Penalty for non-production.

130. The accounts of a corporation shall be examined once at least in every year, and the correctness of the balance-sheet shall be ascertained by an auditor or auditors. R.S.O. 1914, c. 178, s. 127. Annual audit.

131. The first auditors of a corporation may be appointed by the directors before the first meeting of the shareholders or members, and shall hold office until the first general meeting. R.S.O. 1914, c. 178, s. 128. First auditors.

132. Thereafter the auditors shall be appointed by resolution at a general meeting of the corporation and shall hold office until the next annual meeting unless previously removed by a resolution of the shareholders or members in general meeting, R.S.O. 1914, c. 178, s. 129. Subsequent auditors.

133. The auditors may be shareholders or members of the corporation, but no person shall be eligible as an auditor who is interested, otherwise than as a shareholder or member, in any transaction of the corporation; and no director or other officer of the corporation shall be eligible during his continuance in office. R.S.O. 1914, c. 178, s. 130. Auditors may be shareholders.

134. If an appointment of auditors is not made at an annual meeting the Provincial Secretary, on the application of any shareholder or member of the corporation, may appoint an auditor for the current year and fix the remuneration, if any, to be paid to him by the corporation for his services. R.S.O. 1914, c. 178, s. 131. In default Provincial Secretary may appoint.

135. The directors of a corporation may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act, and any auditor shall be eligible for reappointment. R.S.O. 1914, c. 178, s. 132. Directors may fill casual vacancy.

Remuneration
of auditors.

136. The remuneration of the auditors shall be fixed by the corporation in general meeting, except that the remuneration of any auditors appointed before the first general meeting or to fill any casual vacancy may be fixed by the directors. R.S.O. 1914, c. 178, s. 133.

Rights and
duties of
auditors.

137.—(1) Every auditor shall have the right of access at all times to the books, accounts and vouchers of the corporation, and may require from the directors and officers of the corporation such information and explanation as may be necessary for the performance of his duties.

Certificate
and report.

(2) The auditors shall sign a certificate at the foot of the balance-sheet stating whether or not their requirements as auditors have been complied with, and shall make a report to the shareholders or members on the accounts examined by them, and on every balance-sheet laid before the corporation in general meeting during their tenure of office; and in every such report shall state whether, in their opinion, the balance-sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the corporation's affairs as shown by its books.

Reading at
general
meeting.

(3) Such report shall be read at the general meeting. R.S.O. 1914, c. 178, s. 134.

PART X.

MISCELLANEOUS.

Annual
statement
or return of
the affairs of
the corpora-
tion.

138.—(1) On or before the 1st day of February in each and every year without notice or demand to that effect, every corporation incorporated under the laws of Ontario, and every other corporation having its head or other office or doing business or any part thereof, in the Province of Ontario, shall, unless a corporation liable to payment of taxes under section 3 of *The Corporations Tax Act*, make out, verify and deliver to the Provincial Secretary, as hereinafter required, a detailed statement or return containing as of the 31st day of December next preceeding, correctly stated, the following information and particulars:—

Rev. Stat.
c. 29.

Contents of
statement or
return.

- (a) the name of the corporation;
- (b) the jurisdiction under the laws of which the corporation was incorporated;
- (c) the manner in which the corporation is incorporated, whether by special Act, or by letters patent, or otherwise, and the date thereof;
- (d) whether the existence of the corporation is limited, by Statute or otherwise, and, if so, the period of its existence yet to elapse, and whether its existence may be lawfully extended;

- (e) whether the corporation is a valid and subsisting corporation;
- (f) a concise and general statement of the nature of the business or objects of the corporation;
- (g) the names, residences and post office addresses of the president, secretary, treasurer, directors, and manager of the corporation;
- (h) the name and post office address of the chief officer or manager in Ontario;
- (i) a list alphabetically arranged, of the persons who, on the said 31st day of December next preceding, were shareholders of the corporation, and the residence and post office address of each such person; the number of shares held by each; and the amount, if any, paid thereon;
- (j) the location of the head office of the corporation, giving the street and number when possible;
- (k) the location of the principal office in Ontario where the head office is situated outside of Ontario;
- (l) the date upon which the last annual meeting of the corporation was held;
- (m) the amount of the bond or debenture debt of the corporation;
- (n) a detailed statement of the real estate owned by it situated within Ontario, where situate and the value thereof;

And in the case of a corporation having share capital, in addition,

- (o) the amount of the capital stock of the corporation, and the number of shares into which it is divided;
- (p) the number of shares issued and allotted and the amount paid thereon;
- (q) the par value and if without par value, then the market value, or if there be no market value, the actual value of its shares of stock;
- (r) the total amount of shares issued as preference shares;
- (s) the total amount paid on such shares;
- (t) the total number and amount of share warrants and the names, residences and post office addresses of the persons to whom the same were issued;

- (u) the number of shares, if any, issued as consideration for any transfer of assets, goodwill, or otherwise, and the extent to which the same are paid; if none are so issued, this fact to be stated;
- (v) such other information as may be required by Order-in-Council, a copy of which Order-in-Council shall be published in the *Ontario Gazette*;

If the corporation is a mining company to which Part XI is made applicable,

- (w) the number of shares sold or otherwise disposed of at a discount or premium;
- (x) the rate at which such shares were sold or disposed of;
- (y) whether a verified copy of the by-laws, if any, providing for the sale of shares at a discount or otherwise was sent to the Provincial Secretary;
- (z) the date or dates upon which such by-laws, if any, were passed and confirmed. 1921, c. 58, s. 3, *part*; 1924, c. 47, s. 8 (1).

Posting of
statement
or return.

(2) A duplicate of such statement or return with the affidavit of verification shall be posted up in a conspicuous position in the head or principal office in Ontario of the corporation on or before the 2nd day of February in each year, and may be inspected by any shareholder or creditor of the corporation; and the corporation shall keep the same so posted until another statement or return is posted up under the provisions of this Act.

Verification
thereof.

(3) The statement or return of every corporation shall be verified by the affidavit of any two of the following officers of the corporation, namely, the president, vice-president, secretary, treasurer or manager, or such other person or persons connected with the corporation having a personal knowledge of the affairs of the corporation as the Provincial Secretary may require; and if the president or vice-president does not make or join in the affidavit, the reason therefor shall be stated in the affidavit.

Transmission
to Provincial
Secretary.

(4) The statement or return so verified shall, on or before the 8th day of February next after the time hereinbefore prescribed for making the statement or return, be transmitted to the Provincial Secretary. 1921, c. 58, s. 3, *part*.

Penalty for
default.

(5) If a corporation makes default in complying with the provisions of this section, the corporation shall be liable to a penalty of \$20 for every day during which the default continues and every director, manager or secretary of the corporation, who knowingly and wilfully authorizes or permits such default, shall incur the like penalty, but such penalties shall be recoverable only by action at the suit of or brought by a

private person suing on his own behalf with the written consent of the Attorney-General of the Province of Ontario, and the corporation shall also be liable to a tax of double the amount for which it would have been liable under section 141 of this Act, and any penalty or such double tax may be recoverable in any court of competent jurisdiction by action at the suit of the Crown to be tried by a judge without a jury. In any such action the Crown shall have the same right, either before, during or after the trial, to require the production of documents, to examine parties or witnesses or take such other proceedings in aid of the action as a plaintiff has or may take in an ordinary action. 1921, c. 58, s. 3, *part*; 1924, c. 47, s. 8 (2).

(6) Corporations incorporated before the 1st day of July, 1907, under any Act repealed by *The Ontario Companies Act* (1907), except chapter 191 of the Revised Statutes of Ontario, 1897, and Acts consolidated therewith for which that Act was substituted, shall make such statements or returns under this section as are required from corporations without share capital. Corporations incorporated before 1st July, 1907, etc. 1907, c. 34.

(7) The Provincial Secretary may at his discretion and for good cause enlarge the time for making and delivering any such statement or return. Provincial Secretary may enlarge time.

(8) No registrar of deeds or land titles officer shall register any instrument made by or in favour of, or purporting to confer any interest in land, whether by way of caution, certificate or otherwise, upon any corporation regarding which he shall have received notice in writing from the Provincial Secretary that such corporation is in arrears in respect to any such statement or return or any tax or fee payable with such statement or return. 1921, c. 58, s. 3, *part*. Transfer to or by corporation in arrears not to be registered.

139. Every company shall make a return to the Provincial Secretary from time to time, as the same occur, of all changes among the directors, and shall incur a penalty, not exceeding \$20 for every contravention of this section. R.S.O. 1914, c. 178, s. 136. Return to Provincial Secretary of change of directors, etc.

140. The Provincial Secretary may, whenever he sees fit, require a corporation to make a return upon any subject connected with its affairs, and the corporation shall make the return within the time mentioned in the notice requiring the same. R.S.O. 1914, c. 178, s. 137. Return may be required upon any subject.

141.—(1) The Lieutenant-Governor in Council may establish, alter and regulate the tariff of fees to be paid on applications, returns, filings and all transactions under this Act; and may prescribe the form of proceedings and record in respect thereof, and all other matters which he may deem requisite for carrying out the objects of this Act. Tariff of fees to be fixed by Order in Council.

Fees may vary
in amount.

(2) Such fees may be made to vary in amount, having regard to the nature of the corporation, amount of capital and otherwise, as may be deemed expedient.

Restriction.

(3) No step shall be taken towards the issue of any letters patent or supplementary letters patent or the filing of any document under this Act, until all fees therefor and all fees due for any other service have been duly paid. R.S.O. 1914, c. 178, s. 138.

No compliance
with Act to
file returns,
etc., without
payment of
fees.

142. No tender or transmission of any return, by-law or other document shall be a due compliance with the provisions of this Act unless and until the prescribed fee for receiving and filing the same has been paid to and has been accepted by the Provincial Secretary. R.S.O. 1914, c. 178, s. 139.

Evidence
of by-laws.

143. A copy of any by-law of a corporation under its seal and purporting to be signed by any officer of the corporation, or a certificate similarly authenticated, to the effect that a person is a shareholder or member of the corporation, and that dues or other sums payable are due and have not been paid, or that a call or assessment which has been made, is due and has not been paid, shall be received as *prima facie* evidence of the by-law or of the statements contained in such certificate in all courts. R.S.O. 1914, c. 178, s. 140.

Authentication
of summons
and notices.

144. A document or proceeding requiring authentication by a corporation may be signed by any director, manager or other authorized officer of the corporation, and need not be under its seal. R.S.O. 1914, c. 178, s. 141.

Service of
notices.

145. A notice or demand to be served or made by a corporation upon a shareholder or member may be served or made either personally or by registered post, addressed to the shareholder or member at his place of abode as it last appeared on the books of the corporation. R.S.O. 1914, c. 178, s. 142.

Time of
service.

146. A notice or other document served by post by a corporation on a shareholder or member shall be deemed to be served at the time when it would be delivered in the ordinary course of post. R.S.O. 1914, c. 178, s. 143.

Sanctioning
by-laws by
written
consent of all
shareholders.

147. Any by-law by this Act requiring confirmation by the shareholders or members of the corporation may in lieu of confirmation at a general meeting be confirmed by the consent in writing of all the shareholders or members. R.S.O. 1914, c. 178, s. 144.

Proof of
matters under
this Act.

148. Proof of any matter which may be necessary to be made under this Act may be made by statutory declaration, affidavit, or deposition before the Provincial Secretary, or

any officer to whom the matter may be referred by him, or before any person authorized to take affidavits. R.S.O. 1914, c. 178, s. 145.

149. A corporation may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney to execute on its behalf deeds to which it is a party in any capacity in any place situate within or without the Province of Ontario; and every deed signed by such attorney, on behalf of the corporation and under his seal, shall bind the corporation and have the same effect as if it were under the common seal of the corporation. 1921, c. 58, s. 2, *part*. Power of attorney by corporation.

150.—(1) A corporation may have for use in any territory, district or place not situate in the Province of Ontario an official seal, which shall be a facsimile of the common seal of the corporation, with the addition on its face of the name of every territory, district or place where it is to be used. Power for corporation to have official seal for use abroad.

(2) A corporation having such an official seal may by writing under its common seal, authorize any person appointed for the purpose in any territory, district or place not situate in the Province of Ontario, to affix the same to any deed or other document to which the corporation is party in any capacity in that territory, district or place. Authority to agent to affix seal.

(3) The authority of any such agent shall, as between the corporation and any person dealing with the agent, continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is therein mentioned, then until notice of the revocation or termination of the agent's authority has been given to the person dealing with him. Duration of agent's authority to bind corporation.

(4) The person affixing any such official seal shall, by writing under his hand, on the deed or other document to which the seal is affixed, certify the date and place of affixing the same. Certifying date and period of sealing.

(5) A deed or other document to which an official seal is duly affixed shall bind the corporation as if it had been sealed with the common seal of the corporation. 1921, c. 58, s. 2, *part*. Official seal to have same effect as common seal.

151. Except so far as otherwise expressly provided by this Act, the penalties imposed by or under the authority of this Act shall be recoverable under *The Summary Convictions Act*, and the provisions of the said Act shall apply to every prosecution hereunder. 1924, c. 47, s. 9, *part*. Recovery of penalties. Rev. Stat. c. 121.

152. A company or corporation which insures property with or insures the property of other persons, firms, companies or corporations, where such insurance is reciprocal and for Reciprocal insurance.

protection only and not for profit, shall not be deemed to be an insurer or an insurance corporation within the meaning of this Act, provided that such insurance is effected outside of Ontario and without any solicitation whatsoever in Ontario directly or indirectly on the part of the insurer. 1924, c. 47, s. 9, *part*.

PART XI.

MINING COMPANIES.

Issuing
shares at
a discount.
1907, c. 34.

1912, c. 31.

Rev. Stat.
1914, c. 178.

153. A mining company incorporated before the first day of July, 1907, or thereafter incorporated under *The Ontario Companies Act* (1907), or under *The Ontario Companies Act* (1912), or under *The Ontario Companies Act* (R.S.O. 1914), or under this Act, and made by the letters patent subject to the provisions of this Part, may issue its shares at a discount or at any other rate in the manner hereinafter prescribed. R.S.O. 1914, c. 178, s. 146.

Shareholders
not personally
liable for calls.

154. No shareholder of such a company holding shares, issued as herein provided, shall be personally liable for non-payment of any calls made upon his shares beyond the amount agreed to be paid therefor. R.S.O. 1914, c. 178, s. 147.

By-law auth-
orizing issue
of shares at a
discount.

155. No shares shall be issued at a discount unless authorized by a by-law of the company fixing and declaring the rate and any other terms and conditions of the issue, confirmed at a general meeting of the shareholders duly called for considering the same. R.S.O. 1914, c. 178, s. 148.

Verified copy
of by-law to
be transmitted
to Provincial
Secretary.

156. A copy of such by-law, within twenty-four hours after the same has been confirmed, shall be transmitted by registered post to the Provincial Secretary, or be filed in his office within five days, and such copy shall be verified as a true copy by the joint affidavit of the president and secretary, and if there are no such officers, or they, or either of them, are, or is, at the proper time unable to make the same, by the affidavit of the president or secretary and one of the directors, or of two of the directors, as the case may require; and if the president or secretary does not make or join in the affidavit the reason therefor shall be stated in the substituted affidavit. R.S.O. 1914, c. 178, s. 149.

What notice to
appear on
documents
issued by
company.

157. Every such company shall have written or printed, immediately after or under its name, wherever such name is used by the company or by any director, officer, servant or employee thereof, and shall have engraved upon its seal the words "NO PERSONAL LIABILITY"; and upon every share certificate issued by the company, distinctly written or printed

in red ink, where such share certificates are issued in respect of shares subject to call, the words "SUBJECT TO CALL"; or, if in respect to shares not subject to call, the words "NOT SUBJECT TO CALL," according to the fact. R.S.O. 1914, c. 178, s. 150.

158.—(1) In the event of any call on shares of such a company remaining unpaid by the holder thereof for a period of sixty days after notice and demand of payment, such shares may be declared to be in default, and the secretary of the company may advertise such shares for sale at public auction to the highest bidder for cash by giving notice of such sale in a newspaper published at the place where the principal office of the company is situate, or if no newspaper is published there, then in a newspaper published at the nearest place to such office, once a week for four successive weeks.

Sale of shares on non-payment of calls.

Notice of sale.

(2) The notice shall contain the numbers of the share certificates in respect of such shares and the number of shares, the amount of the call or calls due and unpaid and the time and place of sale.

Contents of.

(3) In addition to the publication of the notice, it shall be personally served upon such shareholder or sent to him by registered post addressed to him at his last known place of abode.

Service and publication.

(4) If the holder of such shares fails to pay the amount due thereon, with interest and the cost of advertising, before the time fixed for such sale, the secretary shall proceed to sell the same, or such portion thereof as shall suffice to pay such calls together with interest and the cost of advertising and of the sale.

Sale in default of payment.

(5) If the price of the shares so sold exceeds the amount due with interest and costs, the excess shall be paid to the defaulting shareholder on demand. R.S.O. 1914, c. 178, s. 151.

Surplus of proceeds.

(6) In lieu of proceeding to sell under the preceding subsections, the company may maintain an action for the sale of the shares in the Supreme Court and process in such action may be served upon a shareholder resident out of the jurisdiction in the same manner and subject to the same condition as process is permitted to be served out of the jurisdiction in cases provided for by the Consolidated Rules.

Action for sale of shares on non-payment of calls.

(7) When there is any question raised as to the validity of a call or as to the right to sell, an action may be brought in the Supreme Court for the purpose of determining the validity of the call and the right to sell and process in such action may be served on a shareholder resident out of the jurisdiction as provided in subsection 6. 1918, c. 20, s. 30.

Action to determine right to sell.

Appointment
of substitutes
by absent
directors.

159.—(1) A director absent from and resident outside the Dominion of Canada may, if authorized and in such form as may be prescribed by the by-laws of the corporation, by instrument in writing, the execution of which shall be verified by the affidavit of a subscribing witness, appoint and authorize any shareholder holding the number of shares fixed as the qualification of a director to attend and vote, as fully and effectually as if such director were personally present, at any meeting of directors held within the Province of Ontario, and to accept any notice of such meeting.

Acts of
substitute
to be
binding.

(2) All acts done under such authority shall be binding in all respects and to the same extent as if such director granting such authority had done such acts.

Duration of
authority of
substitute.

(3) No authority shall be made for a period exceeding one year, but, if and as provided by the by-laws of the corporation, any such authority may, from time to time, be renewed, and such renewal shall be in writing and so verified.

Authority
to be filed
with
secretary.

(4) Such authority and every renewal thereof so verified shall be filed forthwith with the secretary of the corporation, and a duplicate original so verified, or a notarial copy thereof shall be filed forthwith in the office of the Provincial Secretary. 1925, c. 53, s. 3.

Penalty.

160.—(1) A company which acts in contravention of any provision of this Part and every director, manager or officer thereof shall incur a penalty of \$200.

Relief from
penalty.

(2) A director, manager or officer who proves that he was not a party or privy to the act, and that when he became aware of it he forthwith gave notice thereof to the Provincial Secretary, shall not be liable to the penalty imposed by this section. R.S.O. 1914, c. 178, s. 152.

PART XII.

CO-OPERATIVE CORPORATIONS.

Application of
Part XII to
co-operative
corporations.

161. This Part shall apply to all applications for incorporation of corporations to be operated on a co-operative basis, and to such corporations when incorporated and made by the letters patent subject to the provisions of this Part. 1917, c. 38, s. 1, *part*.

When corpor-
ation to be
deemed co-
operative.

162. A corporation hereafter incorporated shall be deemed to be operated on a co-operative basis if provision is made in its letters patent or by-laws,—

- (a) that no member or shareholder shall have more than one vote; and

- (b) that no member or shareholder shall vote by proxy;
and
- (c) that the surplus funds arising from the business of the corporation shall be distributed annually as follows:—
 - (i) Payment of interest on the paid up capital at a rate not exceeding eight per centum per annum;
 - (ii) Division of the remaining net surplus funds among the members or shareholders in proportion to the volume of business which they have done with or through the corporation;
 - (iii) Where such surplus does not exceed one per centum of the year's gross business said distribution may be deferred by resolution of the corporation. 1917, c. 38, s. 1, *part*.

163.—(1) Branches may vote at general meetings of the corporation by an equal number of proxies for each branch.

Branches
voting at
general
meetings.
Proxies.

(2) The proxy or proxies shall be appointed only by and at a meeting of the branch.

(3) The instrument appointing a proxy under this section shall be signed by the president and secretary of the branch. 1917, c. 38, s. 1, *part*.

164. Before a distribution of the remaining net surplus funds is made, a corporation may, subject to the provision of the by-laws, set aside—

Funds which
may be de-
ducted before
distributing
net surplus
funds.

- (a) an amount not to exceed twenty per centum of the net surplus funds in any one year, as a reserve fund;
- (b) an amount not to exceed five per centum of the net surplus funds in any one year as an educational or community fund;
- (c) a trade refund to non-members or non-shareholders at such proportionate rate of that paid to members or shareholders as may be determined by by-law. 1917, c. 38, s. 1, *part*.

165.—(1) Any person, partnership, organization, society, association, company or corporation, either unincorporated, or hereafter incorporated, not being a corporation within the application of this Part, assuming or using in Ontario a name which includes the word “co-operative,” shall be guilty of an offence, and any person so acting on behalf of such person, partnership, organization, society, association, company or corporation shall also be guilty of an offence, but where the

Unlawful use
of word co-
operative.

word "co-operative" forms part of the corporate name of any corporation heretofore duly incorporated by or under the authority of any general or special Act of Ontario, the word may continue to be used in Ontario as part of the corporate name; and any corporation hereafter incorporated which is co-operative according to the provisions of this Part shall use the word "Co-operative" as a part of its name.

Penalty.

(2) Every person guilty of a contravention of subsection 1 shall incur a penalty not exceeding \$100, and in default of payment shall be liable to imprisonment for a term not exceeding three months.

(3) The provisions of this section shall not apply to a company incorporated by or under the authority of the Parliament of Canada. 1917, c. 38, s. 1, *part*.

**Abbreviation
of word co-
operative.**

166. Where the corporation, or any director, manager, officer, employee or member uses the name of the corporation the word "Co-operative" may be abbreviated to "Co-op." 1917, c. 38, s. 1, *part*.

**Transfers
of shares.**

167. No transfer of shares of the company shall be valid unless and until authorized by the board of directors. 1917, c. 38, s. 1, *part*.

**Capital in
form of
notes.**

168. The capital of corporations, not having share capital, may be in the form of a promissory note, called capital note, of each member, payable on demand, or a joint and several note signed by each member, payable on demand, to the corporation in such amounts and in such manner as the by-laws of the corporation may prescribe. 1917, c. 38, s. 1, *part*.

**Application of
capital notes.**

169. The capital notes shall be the absolute property of the corporation and any or all of them may be used by the board of directors, subject to the by-laws of the corporation, as collateral security for any loan or advance to the corporation. 1917, c. 38, s. 1, *part*.

**Members may
pay capital
note in cash.**

170. Any member may, subject to the by-laws of the corporation, and with the consent of the board of directors, but not otherwise, pay all or part of his capital note in cash to the corporation. 1917, c. 38, s. 1, *part*.

**Extent of
liability of
members.**

171. Whenever the capital notes of any of the members are deposited as security for a debt, loan or advance, all the members shall individually share the liability in proportion to the value of the capital note given to the association by each member, but no member shall be liable for a greater amount than the unpaid portion of his capital note. 1917, c. 38, s. 1, *part*.

172. Members shall not be individually liable to meet their capital notes for any liability of the corporation to any creditor before execution against the corporation has been returned unsatisfied in whole or in part. 1917, c. 38, s. 1, *part*. Members not liable until execution returned unsatisfied.

173. Parts VII. and VIII. of this Act shall not apply to a corporation the authorized capital of which is less than \$15,000, or to corporations without share capital, subject to the provisions of this Part. 1917, c. 38, s. 1, *part*; 1919, c. 41, s. 5; 1920, c. 53, s. 2. Companies with capital less than \$15,000.

174. Membership in a corporation may be transferred, but no such transfer shall be valid unless and until authorized by the board of directors. 1917, c. 38, s. 1, *part*. Transfer of membership.

175.—(1) Branches may be organized in any district with the consent of the board of directors by at least five members. Establishment of branches.

(2) A branch shall enact by-laws in conformity with this Act, but no such by-laws shall take effect until approved by the board of directors. 1917, c. 38, s. 1, *part*.

176. A branch shall establish a local board of management which shall have such powers and duties as shall be prescribed from time to time or as may be delegated to it by the board of directors. 1917, c. 38, s. 1, *part*. Local board of management of branch.

177. Every corporation incorporated under this Part shall,— By-laws.

(a) file a copy of the by-laws or amendments thereof from time to time, certified by the president and secretary, with the seal of the corporation affixed thereto, in the office of the Provincial Secretary, and the by-laws shall not be valid or acted upon until so filed; Filing copy.

(b) deliver to every member on demand in writing a copy of the by-laws; Delivering copies to members.

(c) transmit forthwith to the office of the Provincial Secretary a copy of the balance sheet, statement of income and expenditure and report of the auditor presented at the last annual meeting; Transmit statements to Provincial Secretary.

(d) deliver to every member on demand in writing a copy of the said balance sheet, statement of income and expenditure and report of the auditor. 1917, c. 38, s. 1, *part*. Delivering statements to members.

Powers of
Provincial
Secretary as
to accounts.

178.—(1) The Provincial Secretary may upon the application of any ten members each of whom has been a member for not less than six months immediately preceding the date of the application or upon the application of more than one-third of the total number of such members,

- (a) require the corporation to make a return upon any special subject connected with the affairs of the corporation, and the corporation shall make such return within the term mentioned in the notice requiring such return;
- (b) appoint an accountant to audit the books of the corporation and to report thereon;
- (c) appoint an inspector or inspectors to examine, inspect and report upon the affairs of the corporation;
- (d) call a special meeting of the corporation;
- (e) direct at what time and place a special meeting called as aforesaid is to be held, and what matters are to be discussed and determined at the meeting, and the meeting shall have all the powers of a meeting called according to the by-laws of the corporation, and shall in all cases have power to appoint its own chairman, any by-laws of the corporation notwithstanding. 1917, c. 38, s. 1, *part*; 1920, c. 53, s. 3.

Expenses of
audit, etc.

(2) The expenses incidental to such audit, inspection, or meeting shall be defrayed by the members applying for the same, or officers, or former members or officers, in such proportion as the Provincial Secretary shall direct.

Powers of
auditor
or
inspector.

(3) An auditor or inspector appointed under this section may require the production of all or any of the books, accounts, securities and documents of the corporation and may require its officers, members, agents and servants to furnish such evidence as may be deemed advisable in relation to its business. 1917, c. 38, s. 1, *part*.

Application
of other pro-
visions of Act.

179. Except where inconsistent with the provisions of this Part, the provisions of this Act which apply to companies with share capital shall apply to co-operative corporations using capital in the form of capital notes and the word "share" and "shareholder" in such provisions shall be taken to mean "capital note" and "member" respectively of co-operative corporations. 1917, c. 38, s. 1, *part*.

PART XIII.

COMPANIES OPERATING MUNICIPAL FRANCHISES AND PUBLIC UTILITIES.

Incorporation and Powers.

180. This Part shall apply to all applications for incorporation of companies intended to operate or control any public or municipal franchise, undertaking or utility and which may require for its purposes the erection of any permanent structure in or upon any highway, stream or adjoining navigable waters, and to such companies when incorporated. R.S.O. 1914, c. 178, s. 153.

Application of
this Part of
Act.

181. With the application for incorporation the applicants shall produce to the Provincial Secretary:

Material to
be produced
on application

- (a) evidence that the proposed capital is sufficient to carry out the objects for which the company is to be incorporated; that such capital has been subscribed or underwritten, and that the applicants are likely to command public trust and confidence in the undertaking;
- (b) a detailed description of the plant, works and intended operations of the company, and an estimate of their cost;
- (c) a by-law of every municipality in which the operations of the company are to be carried on, authorizing the execution thereof in the manner set out in such detailed description, where the consent of the council of the municipality is required by law to authorize the company to carry on its operations therein;
- (d) if the undertaking is to be carried on, or in so far as it is to be carried on, in territory without municipal organization, a report from the Minister of Lands and Forests approving of the undertaking;
- (e) if it is proposed that the company shall acquire any plant, works, land, undertaking, good will, contract or other property or assets, a detailed statement of the nature and value thereof;
- (f) such further information as the Provincial Secretary may require. R.S.O. 1914, c. 178, s. 154.

182. The Provincial Secretary may refer the application and all statements, evidence and material filed thereon to engineers, architects, valuers or other experts for consideration, investigation and report regarding the public necessity

Referring
application
to engineers,
etc., for
report.

for the undertaking, the amount of capital required therefor, the value of any plant, works, lands, undertaking, good-will, contract or other property or assets to be acquired and any other matter which may appear to be in the public interest regarding the undertaking. R.S.O. 1914, c. 178, s. 155.

Letters patent
to be issued
on Order in
Council.

183. All letters patent and supplementary letters patent of companies to which the provisions of this Part apply and of all companies heretofore incorporated for any of the purposes mentioned in section 180, shall be issued on the authority of the Lieutenant-Governor in Council, and such letters patent or supplementary letters patent may be issued in terms and on conditions different from those applied for. R.S.O. 1914, c. 178, s. 156.

Notice of
application.

184. Notice of the application shall be published in such manner and shall be given to such persons as the Provincial Secretary may determine. R.S.O. 1914, c. 178, s. 157.

Limitations
in charter.

185. The letters patent or supplementary letters patent, may limit the term of the existence of the company, the rate of dividend payable on the shares of the capital stock, the amount which the company may borrow on debentures, debenture stock, mortgages or other securities and the rate of interest thereon. R.S.O. 1914, c. 178, s. 158.

Proofs, etc.,
to be produced
on application
for Supple-
mentary
letters patent.

186. Upon an application for supplementary letters patent extending the powers, increasing the capital or otherwise varying any term of the letters patent the company shall produce such evidence and statements as are referred to in section 181, and the Provincial Secretary may refer the same in the manner and for the purposes set out in section 182. R.S.O. 1914, c. 178, s. 159; 1921, c. 58, s. 4.

Supplementary
letters patent,
what may be
contained in.

187. The supplementary letters patent may fix the conditions upon which any shares, debentures, debenture stock or other securities of the company, therein authorized to be issued, may be allotted, sold or otherwise disposed of, and may be issued in terms and on conditions different from those applied for, and may vary any term or condition of the application. R.S.O. 1914, c. 178, s. 160.

Rights of
municipality
preserved.

188. No provision contained in this Part or in the letters patent or supplementary letters patent regarding the issue of debentures or other securities or the making of mortgages to secure the same shall in any way prejudice the right which any municipality may have to acquire or take possession of the plant and undertaking of the company. R.S.O. 1914, c. 178, s. 161.

189.—(1) The company may pass by-laws regarding the control and management of its undertaking, its dealings with the public, the collection of tolls, charges, rates or levies for the public service given by the company, and for the use, protection and care of its property while being used, enjoyed or otherwise subject to public use; but no such by-laws shall have any force or effect or be acted upon until approved by the Lieutenant-Governor in Council and notice of the approval has been published four times in a public newspaper published at the place where the undertaking of the company is carried on, or as near thereto as may be, and in the *Ontario Gazette*, unless such publication is dispensed with by the Minister.

Company may pass by-laws for control, etc. of undertaking.

(2) Every person who contravenes any of the provisions of any such by-law shall incur a penalty not exceeding \$20. R.S.O. 1914, c. 178, s. 162.

Penalty.

190. In addition to the other returns which are required by this or any other Act the company shall on or before the 8th day of February in each year make a report to the Provincial Secretary, verified as provided by subsection 3 of section 138, which shall specify

Additional returns.

- (a) the cost of the work, plant and undertaking of the company;
- (b) the amount of its capital, and the amount paid thereon;
- (c) the amount received during the year from tolls, levies, rates and charges and all other sources, stating each separately;
- (d) the amount and rate of dividends paid;
- (e) the amount expended for repairs; and
- (f) a detailed description of any extension or improvement of the works or of any new works proposed to be undertaken in the current year, together with an estimate of the cost thereof. R.S.O. 1914, c. 178, s. 163.

191. The Provincial Secretary may appoint a person to inspect and examine the books of account of the company, and every person so appointed may take copies or extracts from the same, and may require and receive from the keeper of such books, and also from the president and each of the directors of the company, and all the other officers and servants thereof, all such information as to such books and the affairs of the company generally as the person so appointed deems necessary for the full and satisfactory investigation into and report upon the state of the affairs of the company so as to enable him to ascertain the correctness of statements furnished by the company. R.S.O. 1914, c. 178, s. 164.

Inspection of books.

Existence of company may be extended by supplementary letters patent.

192. The Lieutenant-Governor in Council may by supplementary letters patent, extend the term of existence of any company incorporated for a limited period under this or heretofore incorporated under any other general Act for such further period as by Order in Council, made previous to the expiry of such period, he may direct, and the provisions of this Act relating to the expiration of the term of existence of a company shall thereupon apply to such term as so extended. R.S.O. 1914, c. 178, s. 165.

Expropriation.

Powers of expropriation.

193.—(1) A company to which this section is made applicable by the letters patent or supplementary letters patent may take, without the consent of the owner thereof, such lands and easements as may be necessary for the purposes of its undertaking, in like manner, as under the provisions of *The Railway Act*, lands may be expropriated for the purpose of a railway; but any such right of expropriation may be limited or the application of any section of that Act may be excluded.

Rev. Stat. c. 224.

Application of section.

(2) This section shall apply to a company heretofore incorporated under any general or special Act. R.S.O. 1914, c. 178, s. 166.

PART XIV.

WINDING UP OF COMPANIES.

Generally.

Nature of liability of contributory.

194. The liability of any person to contribute to the assets of a corporation under this Act, in the event of the same being wound up, shall be deemed to create a debt accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability. R.S.O. 1914, c. 178, s. 167.

Who liable in case of his death.

195. If a contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representatives, heirs and devisees shall be liable in due course of administration to contribute to the assets of the corporation in discharge of the liability of such deceased contributory and shall be deemed to be contributories accordingly. R.S.O. 1914, c. 178, s. 168.

Voluntary Winding up.

Voluntary winding up.

196. A corporation may be wound up voluntarily

- (a) where the period, if any, fixed for the duration of the corporation by the Act, letters patent or instrument of incorporation, or by supplement-

ary letters patent has expired; or where the event, if any, has occurred, upon the occurrence of which it is provided by the Act or letters patent or instrument of incorporation or by supplementary letters patent that the corporation is to be dissolved, and the corporation in general meeting has passed a resolution requiring the corporation to be wound up;

(b) where the corporation, in general meeting called for that purpose, has passed a resolution requiring the corporation to be wound up;

(c) where the corporation, though it may be solvent as respects creditors, has passed a resolution in general meeting to the effect that it has been proved to its satisfaction that the corporation cannot, by reason of its liabilities, continue its business and that it is advisable to wind it up. R.S.O. 1914, c. 178, s. 169.

197. A winding up shall be deemed to commence at the time of the passing of the resolution authorizing the winding up. R.S.O. 1914, c. 178, s. 170. Commencement of winding up.

198. Whenever a corporation is wound up voluntarily the corporation shall, from the date of the commencement of such winding up, cease to carry on its undertaking, except in so far as may be required for the beneficial winding up thereof; and all transfers of shares, except transfers made to or with the sanction of the liquidators, or alterations in the status of the shareholders or members of the corporation, taking place after the commencement of such winding up, shall be void; but its corporate state and all its corporate powers, notwithstanding that it is otherwise provided by its constating instrument or by-laws, shall continue until the affairs of the corporation are wound up. R.S.O. 1914, c. 178, s. 171. Corporation to cease business.

199. Notice of any resolution passed for winding up a corporation voluntarily shall be given by advertisement in the *Ontario Gazette*, and shall be filed in the office of the Provincial Secretary. R.S.O. 1914, c. 178, s. 172. Publication of notice of winding up.

200.—(1) After the commencement of the winding up, no action or other proceeding shall be proceeded with or commenced against the corporation, and no attachment, sequestration, distress or execution shall be put in force against the estate or effects of the corporation, except by leave of the Court and subject to such terms as the Court may impose. No proceedings against corporation after winding up. Except by leave.

(2) This section shall not apply to any proceeding taken under *The Winding-up Act of Canada*, or other Act respecting insolvency or bankruptcy for the time being in force. R.S.O. 1914, c. 178, s. 173. Exception. R.S.C. 1906, c. 144.

Consequences
of winding up.

201. Upon a voluntary winding up :

Application
of assets.

(a) the property of the corporation shall be applied in satisfaction of all its liabilities *pari passu*, and, subject thereto, shall, unless it is otherwise provided by the by-laws of the corporation, be distributed rateably amongst the shareholders or members according to their rights and interests in the corporation ;

Priority of
claims of cer-
tain employees
to what extent.

(b) in distributing the assets of the corporation, the salary or wages of all clerks and wage-earners in the employment of the corporation due at the date of the commencement of the winding up or within one month before, not exceeding three months' salary or wages, shall be paid in priority to the claims of the ordinary general creditors, and such persons shall be entitled to rank as ordinary or general creditors for the residue of their claims ;

Appointment
of liquidator
and remunera-
tion.

(c) the corporation in general meeting shall appoint such person or persons as it thinks fit to be a liquidator or liquidators for the purpose of winding up the affairs of the corporation and distributing its property, and shall fix the remuneration to be paid to him or them ;

Idem.

(d) if one person only is appointed all the provisions in reference to several liquidators shall apply to him ;

Powers of
directors to
cease.

(e) upon the appointment of liquidators all the powers of the directors shall cease except in so far as the corporation in general meeting or the liquidators may sanction the continuance of such powers ;

Powers to be
exercised by
liquidators.

(f) where several liquidators are appointed every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination by any number not less than two ;

Settlement
of list of
contributories.

(g) the liquidators shall settle the list of contributories, and any list so settled shall be *prima facie* evidence of the liability of the persons named therein to be contributories ;

Demand pay-
ment from
contributories.

(h) the liquidators may at any time after the passing of the resolution for winding up, and before they have ascertained the sufficiency of the assets of the corporation, call on all or any of the contributories, for the time being settled on the list of contributories, to the extent of their liability to pay any sum which they may deem necessary to satisfy the debts and liabilities of the corporation, and the

costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves; and the liquidators may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same;

- (i) the liquidators shall pay the debts of the corporation and adjust the rights of the contributories, shareholders or members amongst themselves. Liquidators to pay debts of corporation.
R.S.O. 1914, c. 178, s. 174.

202. All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidators, after taxation by one of the taxing officers of the Supreme Court at Toronto who is hereby empowered to tax the same, shall be payable out of the assets of the corporation in priority to all other claims. Payment of costs and expenses. R.S.O. 1914, c. 178, s. 175.

203.—(1) The liquidators shall have power to,—

- Power of liquidators.
- (a) bring or defend any action, suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the corporation; Bring or defend actions.
- (b) carry on the business of the corporation so far as may be necessary for the beneficial winding up of the same; Carry on business of corporation.
- (c) sell *en bloc* or in parcels the real and personal property, effects and things in action of the company by public auction or private contract; Sell by public auction or private contract.
- (d) do all acts and execute, in the name and on behalf of the corporation, all deeds, receipts and other documents, and for that purpose use the seal of the corporation; Execute deeds, etc.
- (e) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the corporation; Draw and endorse promissory notes, etc.
- (f) raise upon the security of the assets of the corporation from time to time any requisite sum or sums of money; Raise sums necessary.
- (g) take out in their official name letters of administration to the estate of any deceased contributory and do in their official name any other act that may be necessary for obtaining payment of any money due from a contributory or from his estate and which act cannot be conveniently done in the name of the corporation; Take out letters of administration, etc.

Do all other things necessary.

(h) do and execute all such other things as may be necessary for winding up the affairs of the corporation and distributing its assets.

Bills of exchange, etc., to be deemed drawn in due course.

(2) The drawing, accepting, making or endorsing of a bill of exchange or promissory note on behalf of the corporation shall have the same effect with respect to the liability of the corporation as if such bill or note had been drawn, accepted, made or endorsed by or on behalf of such corporation in the course of carrying on the business thereof.

When moneys deemed to be due to liquidators.

(3) Where the liquidators take out letters of administration or otherwise use their official name for obtaining payment of any money due from a contributory, such money shall be deemed, for the purpose of enabling them to take out such letters or recover such money, to be due to the official liquidators themselves. R.S.O. 1914, c. 178, s. 176.

Inspectors.

204. A corporation about to be wound up voluntarily, or in the course of being so wound up, may, in general meeting, by resolution, delegate to any committee of its shareholders or members, contributories or creditors, hereinafter referred to as inspectors, the power of appointing liquidators and filling any vacancies in the office of liquidators, or may by a like resolution enter into any arrangement with its creditors with respect to the powers to be exercised by the liquidators and the manner in which they are to be exercised. R.S.O. 1914, c. 178, s. 177.

Deposit in bank by liquidators.

205.—(1) The liquidators shall deposit at interest in some chartered bank at a branch or agency in Ontario all sums of money which they may have in their hands belonging to the corporation, whenever such sums amount to \$100.

Approval of bank by inspectors.

(2) If inspectors have been appointed the bank shall be one approved by them.

Separate deposit account to be kept; withdrawal from account.

(3) Such deposit shall not be made in the name of the liquidators generally, but a separate deposit account shall be kept of the money belonging to the corporation, in the name of the liquidators as such, and of the inspectors, if any; and such money shall be withdrawn only on the joint cheque of the liquidators and one of the inspectors, if there be any.

Liquidators to produce bank pass-book.

(4) At every meeting of the shareholders or members of the corporation the liquidators shall produce a pass-book, showing the amount of the deposits, the dates at which they were made, the amounts withdrawn and dates of withdrawal; of which production mention shall be made in the minutes of the meeting, and the absence of such mention shall be *prima facie* evidence that the pass-book was not produced at the meeting.

(5) The liquidators shall also produce the pass-book whenever so ordered by the Court upon the application of the inspectors or of a shareholder or member of the corporation. Idem.
R.S.O. 1914, c. 178, s. 178.

206.—(1) The liquidators may from time to time, during the continuance of the winding up, summon general meetings of the corporation for the purpose of obtaining the sanction of the corporation by resolution, or for any other purpose they think fit. Meetings of corporation during winding up.

(2) In the event of the winding up continuing for more than one year the liquidators shall summon a general meeting of the corporation at the end of the first year and of each succeeding year from the commencement of the winding up, and shall lay before such meeting an account showing their acts and dealings, and the manner in which the winding up has been conducted during the preceding year. R.S.O. 1914, c. 178, s. 179. Where winding up continues more than one year.

207. If any vacancy occurs in the office of liquidators appointed by the corporation by death, resignation or otherwise the corporation in general meeting may, subject to any arrangement it may have entered into with its creditors, upon the appointment of inspectors, fill such vacancy, and a general meeting for that purpose may be convened by the continuing liquidators, if any, or by any contributory, and shall be deemed to have been duly held in the manner prescribed by the by-laws of the corporation, or, in default thereof, in the manner prescribed by this Act for calling general meetings of the shareholders or members of the corporation. R.S.O. 1914, c. 178, s. 180. Vacancy in office of liquidator.

208. The provisions of section 51 of *The Trustee Act* shall apply *mutatis mutandis* to liquidators. R.S.O. 1914, c. 178, s. 181. Distribution of assets. Rev. Stat. c. 150.

209. The liquidators, with the sanction of a resolution of the corporation in general meeting or of the inspectors, may make such compromise or other arrangement, as the liquidators deem expedient, with any creditor, or person claiming to be a creditor, or having or alleging that he has any claim, present or future, certain or contingent, ascertained or sounding only in damages, against the corporation or whereby the corporation may be rendered liable. R.S.O. 1914, c. 178, s. 182. Arrangements may be authorized with creditors.

210. The liquidators may, with the like sanction, compromise all calls and liabilities to call, debts and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the corporation and any contributory, alleged contributory or Power to compromise with debtors and contributories.

**Take
security.**

other debtor or person apprehending liability to the corporation and all questions in any way relating to or affecting the assets of the corporation, or the winding up of the corporation, upon the receipt of such sums, payable at such times and generally upon such terms as may be agreed upon; and the liquidators may take any security for the discharge of such calls, debts or liabilities and give a complete discharge in respect thereof. R.S.O. 1914, c. 178, s. 183.

**Power to
accept shares,
etc., as a con-
sideration for
sale of prop-
erty to an-
other com-
pany.**

211.—(1) Where a corporation is proposed to be or is in the course of being wound up, and the whole or a portion of its business or property is proposed to be transferred or sold to another corporation, the liquidators of the first mentioned corporation, with the sanction of a resolution in general meeting of the corporation by which they were appointed conferring either a general authority on the liquidators or an authority in respect of any particular arrangement, may receive, in compensation or in part compensation for such transfer or sale, shares or other like interest in such other corporation for the purpose of distribution among the shareholders or members of the corporation which is being wound up in the manner set forth in the arrangement, or may, in lieu of receiving cash, shares, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing corporation. R.S.O. 1914, c. 178, s. 184 (1); 1925, c. 53, s. 4.

**Confirmation
of sale or
arrangement
by liquidators.**

(2) Any sale made or arrangement entered into by the liquidators in pursuance of this section shall be binding on the shareholders or members of the corporation which is being wound up or on each class of shareholders or members if there be more than one class, provided that in the case of a company, the shareholders or classes of shareholders as the case may be, present in person or by proxy at a general meeting duly called for the purpose, by votes representing three-fourths of the shares or each class of shares represented at such meeting, or in the case of a corporation without share capital, by a majority representing three-fourths in number of the members or each class of members in the event of there being more than one class, approve such sale or arrangement, and such sale or arrangement in either case is approved by an order made by a judge of the Supreme Court in chambers on the application of the corporation. 1925, c. 53, s. 5.

**Special resolu-
tion not in-
valid because
prior to resolu-
tion to
wind up.**

(3) No resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with a resolution for winding up the corporation or for appointing liquidators. R.S.O. 1914, c. 178, s. 184 (3).

**Proving
claims.
Rev. Stat.
c. 162.**

212. For the purpose of proving claims, sections 25, 26 and 27 of *The Assignments and Preferences Act* shall *mutatis mutandis* apply except that where the word "judge" is used

there shall be substituted for it the words "master or local master mentioned in section 213." R.S.O. 1914, c. 178, s. 185.

213.—(1) The master, where the head office of the corporation is in the County of York, or the local master where the head office is in any other county or in a district, or the master or any local master where a judge of the Supreme Court deems it more convenient that the application should be made to him, and so directs or allows upon the application of the liquidators or of the inspectors or of any creditor affected by the provisions of section 209, after hearing such parties as he shall direct to be notified, or after such steps as he may prescribe have been taken, may give his opinion, advice or direction in any matter arising in the liquidation, and the same shall be followed and shall be binding upon all parties in the liquidation, subject to an appeal to a judge of the Supreme Court in chambers, if leave to appeal is given by such master or local master or by a judge of the Supreme Court, and the order of the judge shall be final and binding in the liquidation..

Application
to Master
in Ordinary
or Local
Master for
opinion.

By liquidators
or inspectors.

(2) A creditor affected by anything done, or proposed to be done under the authority of section 211, shall have the like right to apply in respect thereof, and in other respects the provisions of subsection 1 shall apply. R.S.O. 1914, c. 178, s. 186.

By creditors.

Winding up under Order of the Court.

214. A corporation may be wound up by order of the Supreme Court,—

Winding up
by Court.

- (a) where it may be wound up voluntarily;
- (b) where proceedings have been begun to wind up voluntarily and it appears to the Court that it is in the interests of contributories and creditors that they should be continued under the supervision of the Court;
- (c) where in the opinion of the Court it is just and equitable for some reason other than the bankruptcy or insolvency of the corporation that it should be wound up;
- (d) where the letters patent have been declared forfeited or revoked or made void. R.S.O. 1914, c. 178, s. 187.

215.—(1) The winding-up order may be made by a judge or local judge of the Supreme Court in chambers upon the petition of the corporation or of a shareholder or member or, when the corporation is being wound up voluntarily, of the liquidator or a contributory or of a creditor having a claim of \$200 or upwards.

Who may
apply.

Notice.

(2) Except where the application is made by the corporation four days' notice shall be given to the corporation before the making of the same. R.S.O. 1914, c. 178, s. 188.

Commence-
ment of
winding up.

216. Where a winding-up order is made by the Court without prior voluntary winding-up proceedings the winding up shall be deemed to commence at the time of service of notice of the presentation of the petition. R.S.O. 1914, c. 178, s. 189.

Powers of
Court.

217. The Court may make the order applied for or may dismiss the petition with or without costs, may adjourn the hearing conditionally or unconditionally, or may make any interim or other order as may be deemed just; and upon the making of the order may, according to its practice and procedure, refer the proceedings for the winding up, and may also delegate any powers of the Court conferred by this Act to any officer of the Court. R.S.O. 1914, c. 178, s. 190.

Appointment
of liquidator.

218.—(1) The Court in making the winding-up order may appoint a liquidator or liquidators of the estate and effects of the corporation; but no such liquidator shall be appointed unless a previous notice is given to the creditors, contributories, shareholders or members in the manner and form prescribed by the Court.

Notice,
when not
necessary.

(2) If a liquidator has already been appointed in a voluntary liquidation such notice need not be given. R.S.O. 1914, c. 178, s. 191.

Appointment
by Court.

219.—(1) If from any cause there is no liquidator acting either provisionally or otherwise the Court may on the application of a shareholder or member of the corporation appoint a liquidator or liquidators.

Removal of
liquidator.

(2) The Court may also, for due cause, remove a liquidator and appoint another liquidator.

The case of
no liquidator.

(3) When there is no liquidator the estate shall be under the control of the Court until the appointment of a liquidator. R.S.O. 1914, c. 178, s. 192.

Proceedings
in winding up
after order.

220. When a winding-up order has been made proceedings for the winding up of the corporation shall be taken in the same manner and with the like consequences as hereinbefore provided for a voluntary winding up, except that the list of contributories shall be settled by the Court unless the same has been settled by the liquidator prior to the winding-up order, in which case such list shall be subject to review by the Court, and except that all proceedings in the winding up shall be subject to the order and direction of the Court. R.S.O. 1914, c. 178, s. 193.

221.—(1) The Court may direct meetings of the share-holders or members of the corporation to be summoned, held and conducted in such manner as the Court deems fit for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting and to report the result of it to the Court.

Meetings of members of company may be ordered.

(2) The Court may require any contributory for the time being settled on the list of contributories, or any trustee, receiver, banker or agent or officer of the corporation to pay, deliver, convey, surrender or transfer forthwith, or within such time as the Court directs, to the liquidator any sum or balance, books, papers, estate, or effects which are in his hands and to which the corporation is *prima facie* entitled.

Order for delivery by contributories and others of property, etc.

(3) The Court may make such order for the inspection by the creditors and contributories of the corporation of its books and papers as the Court deems just; and any books and papers in the possession of the corporation may be inspected in conformity with the order of the Court, but not further or otherwise. R.S.O. 1914, c. 178, s. 194.

Inspection of books.

222.—(1) The Court may, at any time after the commencement of the winding up, summon to appear before the Court or liquidator any officer of the corporation, or any other person known or suspected to have in his possession any of the estate or effects of the corporation, or supposed to be indebted to it, or any person whom the Court may deem capable of giving information concerning its trade, dealings, estate or effects.

Examination of persons before court or liquidator.

(2) Where in the course of the winding up it appears that any person who has taken part in the formation or promotion of the corporation or any past or present director, manager, or official or other liquidator, or receiver, or any officer or employee of the corporation has misapplied, or retained in his own hands, or become liable or accountable for, money of the corporation, or been guilty of any misfeasance or breach of trust in relation to it, the Court may, on the application of a liquidator or of any creditor or contributory, examine into the conduct of the person charged and compel him to repay the money so misapplied or retained, or for which he has become liable or accountable, together with interest at such rate as the Court deems just, or to contribute such sum to the assets of the corporation by way of compensation in respect of such misapplication, retainer, misfeasance or breach of trust as the Court deems just. R.S.O. 1914, c. 178, s. 195.

Power of court to assess damages against delinquent directors, etc.

223.—(1) If a shareholder or member of the corporation desires to cause any proceeding to be taken which, in his opinion, would be for the benefit of the corporation, and the liquidator, under the authority of the shareholders or members, or of the inspectors, refuses or neglects to take such

Proceedings by shareholders at their own expense and for their own benefit only.

proceeding, after being required so to do, the shareholder or member may obtain an order of the Court authorizing him to take such proceeding in the name of the liquidator or corporation, but at his own expense and risk, upon such terms and conditions as to indemnity to the liquidator or corporation as the Court may prescribe.

Benefits,
when exclu-
sively for
shareholders.

(2) Thereupon any benefit derived from such proceeding shall belong exclusively to the shareholder or member instituting the same for his benefit and that of any other shareholder or member who may have joined him in causing the institution of such proceeding.

Benefits,
when for
corporation.

(3) If before such order is granted the liquidator signifies to the Court his readiness to institute such proceeding for the benefit of the corporation, an order shall be made prescribing the time within which he shall do so, and in that case the advantage derived from the proceeding, if instituted within such time, shall belong to the corporation. R.S.O. 1914, c. 178, s. 196.

Rights
conferred by
Act to be in
addition to
other powers.

224. The rights conferred by this Act shall be in addition to any other right of instituting proceedings against any contributory, or against any debtor of the corporation, for the recovery of any call or other sum due from such contributory or debtor or his estate. R.S.O. 1914, c. 178, s. 197.

Stay of pro-
ceedings.

225. At any time after an order has been made for winding up, the Court, upon the application of any contributory and upon proof to its satisfaction that all proceedings in relation to the winding up ought to be stayed, may make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as the Court deems fit. R.S.O. 1914, c. 178, s. 198.

Appeal.

226. An appeal shall lie from any order or decision of a local judge, or of any officer to whom a reference is made, to a judge of the Supreme Court sitting in court, as in the case of an appeal from the master's report in an action. R.S.O. 1914, c. 178, s. 199.

To Divisional
Court.

227. An appeal shall lie to a Divisional Court by leave of a judge of the Supreme Court from any order or decision of a judge of that Court in any proceeding in a winding up under an order of the Court when—

R.S.C. 1906,
c. 144, s. 101,
part.

- (a) the question raised on the appeal involves future rights; or
- (b) the order or decision is likely to affect other cases of a similar nature in the winding up proceedings; or

(c) the amount involved in the appeal exceeds \$500;

and the decision of the Divisional Court shall be final. R.S.O. 1914, c. 178, s. 200. Decision final.

228. The Lieutenant-Governor in Council may make rules for the due carrying out of the provisions of this Part, and, except as otherwise provided by this Act or by such rules, the practice and procedure in a winding up under *The Winding-up Act of Canada* shall apply. R.S.O. 1914, c. 178, s. 201. Rules of procedure. R.S.C. 1906, c. 144.

229.—(1) Where the affairs of the corporation have been fully wound up, the liquidator shall make up an account showing the manner in which the winding up has been conducted, and the property of the corporation disposed of, and thereupon shall call a general meeting of the shareholders or members of the corporation for the purpose of having the account laid before them and hearing any explanation that may be given by the liquidator, and the meeting shall be called in the manner provided by the by-laws for calling general meetings. Account of winding up to be made by liquidator to a general meeting.

(2) The liquidator shall make a return to the Provincial Secretary of such meeting having been held, and of the date at which the same was held, and the return shall be filed in the office of the Provincial Secretary; and on the expiration of three months from the date of the filing the corporation shall *ipso facto* be dissolved. R.S.O. 1914, c. 178, s. 202. Return of holding of meeting to be sent to Provincial Secretary. Dissolution.

230.—(1) Notwithstanding the provisions of the next preceding section the Court at any time after the affairs of the corporation have been fully wound up may make an order dissolving the corporation, and the corporation shall be dissolved at and from the date of such order. Order for dissolution.

(2) The order shall be forthwith reported by the liquidator to the Provincial Secretary. Reports thereon.

(3) If the liquidator makes default in transmitting the return, or in reporting the order, if any, declaring the corporation dissolved, he shall incur a penalty not exceeding \$20 for every day during which he is in default. R.S.O. 1914, c. 178, s. 203. Penalty on default in reporting by liquidator or in making return.

231. All dividends deposited in a bank and remaining unclaimed at the time of the dissolution of the corporation shall be left for three years in the bank where they are deposited, or in another bank if so ordered by the Court or judge, and, if then unclaimed, shall be paid over, with interest accrued thereon, to the Treasurer of Ontario, and if afterwards duly claimed shall be paid over by the Treasurer to the persons entitled thereto. R.S.O. 1914, c. 178, s. 204. Disposition of unclaimed dividends.

232.—(1) Every liquidator shall, within thirty days after the date of the dissolution of the corporation, deposit in the bank appointed or named as hereinbefore provided any other Deposit by liquidator with sworn statement.

Penalty on omission.

money then in his hands not required for any other purpose authorized by this Act, with a sworn statement giving an account of such money, and stating that the same is all he has in his hands; and in case of default he shall incur a penalty not exceeding \$10 for every day during which he is in default.

Money to remain on deposit for three years.

(2) The money so deposited shall remain deposited as provided by section 231 for three years in the bank, and shall be then paid over, with interest, to the Treasurer of Ontario, and if afterwards duly claimed shall be paid over to the person entitled thereto.

Disposal of books, etc., after winding up.

(3) Where a corporation has been wound up under this Act and is about to be dissolved, the books, accounts and documents of the corporation and of the liquidators may be disposed of as the corporation by resolution directs in case of voluntary winding up or as the Court directs in case of winding up under order.

After five years responsibility as to custody of books, etc., to cease.

(4) After the lapse of five years from the date of such dissolution no responsibility shall rest on the corporation or the liquidators, or any one to whom the custody of such books, accounts and documents has been committed, by reason that the same or any of them are not forthcoming to any person claiming to be interested therein. R.S.O. 1914, c. 178, s. 205.

Provision for discharge of liquidator and distribution by the Court.

233.—(1) Whenever a corporation is being wound up under an order of the Court, and the realization and distribution of its assets has proceeded so far that in the opinion of the Court it becomes expedient that the liquidator should be discharged, and that the balance remaining in his hands of the money and assets of the corporation can be better realized and distributed by the Court, the Court may make an order discharging the liquidator and for payment, delivery and transfer into Court, or to such officer or person as the Court may direct, of such money and assets, and the same shall be realized and distributed by or under the direction of the Court among the persons entitled thereto in the same way as nearly as may be as if the distribution were being made by the liquidator.

R.S.O. 1906, c. 144, s. 47.

Disposal of books and documents.

(2) In such case the Court may make an order directing how the books, accounts and documents of the corporation and of the liquidator may be disposed of, and may order that they be deposited in Court or otherwise dealt with as may be thought fit. R.S.O. 1914, c. 178, s. 206.

Application to winding up The Toronto Railway Company.

234. The provisions of this Part shall, notwithstanding anything to the contrary in this Act contained, apply to and be deemed to have always applied to The Toronto Railway Company, incorporated by an Act of this Legislature passed in the year 1892, chaptered 99. 1925, c. 53, s. 2.

PART XV.

GENERAL PROVISIONS.

235.—(1) The Lieutenant-Governor in Council may by supplementary letters patent, upon the application of a corporation or of a shareholder, a creditor or a holder of bonds, debentures, debenture stock, or other securities or obligations thereof, or of any person with whom the corporation may have dealings, relieve the corporation from any duty, obligation or other disability which may have been imposed, or may limit any right, power or other advantage which may have been conferred upon the corporation by the repeal of the general Act under which it was incorporated and by the enactment of *The Ontario Companies Act* (1907) or of *The Ontario Companies Act* (1912), or of *The Ontario Companies Act* (R.S.O. 1914), or of this Act.

Varying powers or obligations of existing corporations affected by repeal of former enactments.

1907, c. 34.
1912, c. 31.
Rev. Stat.
1914, c. 178.

(2) Notice shall thereupon be given by the Provincial Secretary of such supplementary letters patent in the *Ontario Gazette*, setting out the manner in which any such duty, obligation or other disability has been relieved or in which such right, power or other advantage has been limited. R.S.O. 1914, c. 178, s. 207.

Publication of the change.

236.—(1) This Act, except in so far as it is otherwise expressly declared, shall apply to:

Application of Act.

(a) every company incorporated under any special or general Act of the Parliament of the late Province of Upper Canada;

(b) every company incorporated under any special or general Act of the Parliament of the late Province of Canada which has its head office and carries on business in Ontario, and which was incorporated with objects or purposes to which the authority of this Legislature extends;

(c) every corporation incorporated under any of the Acts repealed by *The Ontario Companies Act* (1907), or under any Act for which any of such repealed Acts was substituted or to which any of such Acts was applicable;

1907, c. 34.

(d) every company incorporated under a special Act to which any of the provisions of *The Ontario Joint Stock Companies' General Clauses Act* or any Act for which that was substituted was applicable;

Rev. Stat.
1897, c. 189.

(e) every corporation incorporated under *The Ontario Companies Act* (1907), or *The Ontario Companies Act* (1912), or *The Ontario Companies Act* (1914), or this Act;

1907, c. 34.
1912, c. 31.

Rev. Stat.
1914, c. 178.

Application
of Act.

(f) every company incorporated under any general or special Act of this Legislature;

Rev. Stat.
c. 222.

except a company incorporated for the construction and working of a railway, incline railway or street railway, the business of insurance except as provided by *The Insurance Act*, and the business of a corporation within the meaning of *The Loan and Trust Corporations Act*, except as provided by that Act. R.S.O. 1914, c. 178, s. 208 (1); 1914, c. 29, s. 4 (1).

Rev. Stat.
c. 223.

Proviso.

237. The Lieutenant-Governor in Council may relieve any company incorporated before the 1st day of July, 1907, from compliance with any of the provisions of this Act. R.S.O. 1914, c. 178, s. 208 (2).

General
corporate
powers of
certain
companies.

238. Every corporation or company heretofore or hereafter created,

(a) by or under any special or general Act of the Parliament of the late Province of Upper Canada;

(b) by or under any special or general Act of the Parliament of the late Province of Canada, which has its head office and carries on business in Ontario, and which was incorporated with objects or purposes to which the authority of this Legislature extends;

1907, c. 34.

(c) by or under any of the Acts repealed by *The Ontario Companies Act* (1907), or under any Act for which any of such repealed Acts was substituted or to which any of such Acts was applicable;

Rev. Stat.
1897, c. 189.

(d) by or under a special Act to which any of the provisions of *The Ontario Joint Stock Companies General Clauses Act* or any Act for which that was substituted were applicable;

(e) by or under any general or special Act of this Legislature,

shall, unless otherwise expressly declared in the Act or instrument creating it, have, and be deemed from its creation to have had, the general capacity which the Common Law ordinarily attaches to corporations created by charter. 1916, c. 35, s. 6.

PART XVI.

INSURANCE COMPANIES.

239. In this Part, unless the context otherwise requires, Interpretation. the words and expressions defined in section 1 of *The Insurance Act*, as used herein, shall have the same meaning as in the said Rev. Stat. c. 222. Act. 1924, c. 47, s. 10, *part*.

240.—(1) The provisions of this Part shall apply to Application. all applications for incorporation of insurers intending to undertake contracts of insurance within Ontario, and to such insurers when incorporated, and to all insurers heretofore incorporated under the law of Ontario.

(2) Except where inconsistent with the provisions of this Part, the provisions of this Act shall apply to all such insurers. 1924, c. 47, s. 10, *part*.

Incorporation of Joint Stock Insurance Companies.

241. A joint stock insurance company may be incorpor- Incorporation. ated under the provisions of this Act for the purpose of undertaking and transacting any class of insurance for which a joint stock insurance company may be licensed under the Rev. Stat. c. 222. provisions of *The Insurance Act*. 1924, c. 47, s. 10, *part*.

242.—(1) Applicants for incorporation shall, immedi- Notice. ately prior to the application, publish in at least four consecutive issues of the *Ontario Gazette* notice of their intention to apply, and shall also, if so required, publish elsewhere notice of such intention.

(2) Applicants for incorporation shall also give at least Notice to superintendent. one month's notice of their intention to apply for incorporation to the superintendent. 1924, c. 47, s. 10, *part*.

243.—(1) If the company undertakes life insurance the Capital stock of life company to be not less than \$500,000. authorized capital stock shall be not less than \$500,000.

(2) If the company undertakes any one or more classes of In other cases to be not less than \$300,000. insurance other than life, the authorized capital stock shall be not less than \$300,000.

(3) The capital stock shall be divided into shares of \$100 Value of shares. each.

(4) All money received on account of shares shall be paid Application of moneys received on account of shares. into a branch or agency in Ontario of some chartered bank of Canada or into a registered trust company in trust for the proposed corporation, and no money paid on account of shares before the first general meeting of the company has been

organized shall be withdrawn or paid over to the company until after such meeting has been organized and an election of directors had thereat. 1924, c. 47, s. 10, *part*.

Increase
of capital.

(5) The provisions of subsection 3 of section 16 of this Act shall not apply to a joint stock insurance company heretofore or hereafter incorporated under the laws of Ontario. 1926, c. 48, s. 5.

Amalgama-
tion.

Rev. Stat.
c. 222.

244. Subject to the approval of the agreement of amalgamation by Order-in-Council pursuant to the provisions of *The Insurance Act*, the provisions of section 10 of this Act shall apply to the amalgamation of two or more joint stock insurance companies. 1924, c. 47, s. 10, *part*.

Incorporation of Mutual and Cash-Mutual Insurance Corporations.

Incorpora-
tion: with
guarantee
capital.

Rev. Stat.
c. 222.

245.—(1) A mutual or cash-mutual corporation with guarantee capital stock may be incorporated under the provisions of this Act for the purpose of undertaking and transacting any class of insurance for which a mutual or cash-mutual insurance corporation may be licensed under the provisions of *The Insurance Act*.

Without
guarantee
capital.

(2) A mutual insurance corporation without guarantee capital stock may be incorporated under the provisions of this Act for the purpose of undertaking contracts of fire insurance upon agricultural property, weather insurance or live-stock insurance, on the premium note plan. 1924, c. 47, s. 10, *part*; 1925, c. 53, s. 6.

Mutual Fire Insurance Corporations without Guarantee Capital Stock.

Meeting to
establish
corporation:
how called.

246. Ten freeholders in any municipality may call a meeting of the freeholders thereof to consider whether it is expedient to establish therein a mutual fire insurance corporation without guarantee capital stock to undertake contracts of fire insurance upon agricultural property, on the premium note plan. 1924, c. 47, s. 10, *part*; 1925, c. 53, s. 7.

Advertise-
ment calling
meeting.

247. The meeting shall be called by advertisement stating the time, place and object of the meeting; and the advertisement shall be published once in the *Ontario Gazette* and once a week for three successive weeks in a newspaper published in the county or district in which the municipality is situate. 1924, c. 47, s. 10, *part*.

Subscription
book.

248. If thirty freeholders are present at the meeting and a majority of them determine that it is expedient to establish a mutual fire insurance corporation they may elect from

among themselves three persons to open and keep a subscription book in which owners of real or personal property within Ontario may sign their names and enter the sum for which they shall respectively bind themselves to effect insurance with the corporation. 1924, c. 47, s. 10, *part*.

249. When one hundred or more of such owners have signed their names in the subscription book and bound themselves to effect insurance in the corporation amounting in the aggregate to not less than \$250,000, a meeting shall be called as hereinafter provided. 1924, c. 47, s. 10, *part*. When meeting may be called.

250.—(1) When the subscription has been completed, any ten of the subscribers may call the first meeting of the proposed corporation at such time and place within the municipality as they may determine by sending a printed notice by mail, addressed to every subscriber at his post office address at least ten days before the day of the meeting, and by advertisement in a newspaper published in the county or district in which the municipality is situate. How meeting to be called.

(2) The notice and advertisement shall state the object of the meeting and the time and place at which it is to be held. 1924, c. 47, s. 10, *part*. Contents of notice.

251.—(1) At such meeting, or at any adjournment of it, the name and style of the company, which shall include the words “fire” and “mutual” shall be adopted, a secretary *ad interim* appointed, a board of directors elected as hereinafter provided and some central and generally accessible place within the municipality or within a municipality adjacent thereto, named, at which the head office of the company shall be located. Election of directors.

(2) The presence of at least twenty-five of the subscribers shall be necessary to constitute a valid meeting. Quorum of meeting.

(3) As soon as convenient after the meeting the secretary *ad interim* shall call a meeting of the board of directors, for the election from among themselves of a president and vice-president, for the appointment of a secretary and a treasurer or a secretary-treasurer, or a manager and the transaction of such other business as may be brought before the meeting. 1924, c. 47, s. 10, *part*. Meeting of directors to elect president and officers.

252.—(1) With the application for incorporation the applicants shall produce to the Provincial Secretary, certified as correct under the hands of the chairman and secretary:— Certain documents to be delivered.

- (a) a copy of the minutes of the meeting including all resolutions respecting the objects of the proposed corporation, its name or style and location of its head office;

- (b) a copy of the subscription book;
- (c) a list showing the names and addresses of the directors elected and of the officers appointed;
- (d) such further information as the Provincial Secretary may require.

Production
of originals.

(2) There shall also, for verification, be produced to the Provincial Secretary, if requested, the originals of such documents. 1924, c. 47, s. 10, *part*.

Provincial
Secretary to
ascertain
correctness
of proceed-
ings.

253. The Provincial Secretary shall ascertain and determine whether the proceedings for the incorporation have been taken in accordance with the provisions of this Part, and whether the subscriptions are *bona fide* and by persons possessing property to insure. 1924, c. 47, s. 10, *part*.

Powers.

254. The letters patent or supplementary letters patent shall limit the powers of a mutual fire insurance corporation without guarantee capital stock incorporated under the provisions of the preceding sections to undertaking contracts of fire insurance upon agricultural property on the premium note plan in accordance with the provisions of *The Insurance Act*. 1924, c. 47, s. 10, *part*; 1925, c. 53, s. 8.

Rev. Stat.
c. 222.

*Incorporation of Mutual Live Stock Insurance Corporations
without Guarantee Capital Stock.*

Meeting to
establish
corporation;
—how called.

255.—(1) Ten owners of live stock in any municipality may call a meeting of the owners of live stock to consult whether it is expedient to establish a live stock insurance corporation upon the mutual plan.

Organiza-
tion; applica-
tion of
several
provisions.

(2) The mode of calling such meeting and the proceedings for the formation of the corporation shall be the same *mutatis mutandis* as in the case of the formation of a mutual fire insurance corporation without guarantee capital stock except that the determination that it is expedient to establish the corporation shall be by thirty residents of the municipality being owners of live stock in Ontario, and that the meeting for the organization of the corporation shall not be held unless and until fifty owners of live stock in Ontario have signed their names to the subscription book and bound themselves to effect insurance in the corporation which in the aggregate shall amount to not less than \$50,000. 1924, c. 47, s. 10, *part*.

Powers of
corporation.

256. The letters or supplementary letters patent shall limit the powers of a mutual live stock insurance corporation incorporated under the provisions of the preceding sections, to undertaking contracts of insurance against loss of live stock by fire, lightning, accident, disease or any other means, except

that of design on the part of the insured or by the invasion of an enemy or by insurrection, on the premium note plan. 1924, c. 47, s. 10, *part*.

Incorporation of Mutual Weather Insurance Corporations without Guarantee Capital Stock.

257.—(1) Ten owners of agricultural property in any municipality may call a meeting of the owners of agricultural property to consult whether it is expedient to establish therein a weather insurance corporation upon the mutual plan. Meeting to establish:—how called.

(2) The mode of calling such meeting and the proceedings for the formation of the corporation shall be the same *mutatis mutandis* as in the case of the formation of a mutual fire insurance corporation without guarantee capital stock except that the determination that it is expedient to establish the corporation shall be by thirty residents of the municipality being owners of agricultural property in Ontario, and that the meeting for the organization of the corporation shall not be held unless and until fifty owners of agricultural property in Ontario have signed their names to the subscription book and bound themselves to effect insurance in the corporation which in the aggregate shall amount to not less than \$50,000. Organiza-
tion. 1924, c. 47, s. 10, *part*.

258. The letters patent or supplementary letters patent shall limit the powers of a mutual weather insurance corporation without guarantee capital stock incorporated under the provisions of the preceding sections, to undertaking contracts of insurance on the premium note plan on any kind of agricultural property against loss or injury arising from such atmospheric disturbances, discharges or conditions as the contract of insurance shall specify. 1924, c. 47, s. 10, *part*. Powers of
corporation.

Cash-Mutual Fire Insurance Corporations: Conversion of Cash-Mutual into Joint Stock Companies.

259. No cash-mutual insurance corporation shall hereafter be incorporated unless formed with guarantee capital stock as hereinafter provided. 1924, c. 47, s. 10, *part*. Cash-
mutual
corporation.

260. Sections 261 to 266 shall apply only to cash-mutual fire insurance corporations licensed pursuant to the provisions of *The Insurance Act* prior to the 1st day of January, 1914. 1924, c. 47, s. 10, *part*. Application
of ss. 261-266
to existing
cash-mutual
corporations.
Rev. Stat.
c. 222.

261.—(1) A cash-mutual insurance corporation which now has a share or stock capital, with the assent of the Lieutenant-Governor in Council, may from time to time increase its share or stock capital to such an amount as he may deem expedient. Increasing
share
capital.

Notice of
application.

(2) Notice of any application to the Lieutenant-Governor in Council under this section shall be published in at least four consecutive issues of the *Ontario Gazette*. 1924, c. 47, s. 10, *part*.

Subscribers
to become
shareholders
of corporation.

262. Every subscriber to such share capital shall, on allotment of one or more shares, become a shareholder of the corporation. 1924, c. 47, s. 10, *part*.

Insurance on
cash plan
not to con-
stitute mem-
bership.

263. No insurance on the wholly cash plan shall make the insured a member of the corporation, or liable to contribute or pay any sum to the corporation, or to its funds, or to any other member thereof, beyond the cash premium agreed upon, or give him any right to participate in the profits or surplus funds of the corporation. 1924, c. 47, s. 10, *part*.

Dividends.

264. The net annual profits and gains of the corporation not including therein any premium notes shall be applied in the first place to pay a dividend on the share capital not exceeding the rate of ten per centum per annum, and the surplus, if any, shall be applied in the manner provided by the by-laws of the corporation. 1924, c. 47, s. 10, *part*.

When cash-
mutual
company
may become
a joint stock
company.

265.—(1) A corporation which has surplus assets, not including premium notes, sufficient to reinsure all its outstanding risks may be formed into a joint stock company upon making application in the manner provided in this Act for the incorporation of joint-stock insurance companies.

Approval of
members
and share-
holders.

(2) The application shall not be made until approved by the members by a vote representing at least two-thirds of the amount of the unexpired risks, and if the corporation has share capital, by two-thirds in value of the shareholders, at an annual general meeting or at a special general meeting and by three-fourths in number of the directors of the corporation in writing signed by them.

Notice of
application.

(3) Notice of the intention to make the application, and of the consideration thereof at such meeting, shall be given by advertisement in the *Ontario Gazette* and in a newspaper published in the county or district in which the head office of the corporation is situate at least once a week for four successive weeks before the holding of the meeting.

Priority of
members in
subscribing
to stock.

(4) Every person who is a member of the corporation on the day of the meeting shall be entitled to priority in subscribing to the capital stock of the corporation for one month after the opening of the books of subscription in the ratio that the insurance held by him bears to the aggregate of the unexpired risks then in force. 1924, c. 47, s. 10, *part*.

Vesting of
assets and
preservation
of liabilities.

266. Any corporation formed under the provisions of the next preceding section shall be answerable for all liabilities of the corporation from which it has been formed, and may sue

and be sued under its new corporate name, and the assets and property of the old corporation shall be vested in the new corporation from the date of its formation. 1924, c. 47, s. 10, *part*.

Mutual Insurance Corporations with Guarantee Capital Stock.

267.—(1) A mutual or cash-mutual insurance corporation may be formed with an authorized guarantee capital stock of not less than \$300,000 nor more than \$500,000. Amount of guarantee capital.

(2) The guarantee capital stock shall be divided into shares of \$100 each. 1924, c. 47, s. 10, *part*. Amount of shares.

268. The shareholders of the guarantee capital stock shall be entitled to a semi-annual dividend of not more than four per centum on their respective shares if the net profits or unused premiums left after all expenses, losses and liabilities then incurred with the reserve for re-insurance are provided for, shall be sufficient to pay the same. 1924, c. 47, s. 10, *part*. Dividends.

269. The guarantee capital shall be applied to the payment of losses only when the corporation has exhausted its assets exclusive of uncollected premiums and when thus impaired, the directors may make good the whole or any part of it by assessments upon the contingent funds of the corporation at the date of such impairment. 1924, c. 47, s. 10, *part*. Payment of loss out of guarantee capital.

270. Shareholders and members of such corporations shall be subject to the provisions of this Act relative to their right to vote as applied to shareholders and policyholders in mutual or cash-mutual corporations incorporated without guarantee capital stock. 1924, c. 47, s. 10, *part*. Right to vote.

271.—(1) The said guarantee capital stock shall be retired when the profits accumulated equal two per centum of the insurance in force. Retirement of guarantee capital stock.

(2) The said guarantee capital stock may be reduced or retired by vote of the policyholders of the corporation with the assent of the Superintendent if the net assets of the corporation, above its reinsurance reserve and all other claims and obligations, exclusive of the guaranteed capital stock, for the two years last preceding, and including the date of its last annual statement, shall be not less than twenty-five per centum of the guaranteed capital stock. 1924, c. 47, s. 10, *part*. Retirement of guarantee capital stock.

272. Notice of the intention of the corporation to reduce or retire the guarantee capital stock under the provisions of the preceding section shall be published in at least four consecutive issues of the *Ontario Gazette*, not less than thirty days Notice.

before the meeting when such action may be taken and elsewhere if so required by the Superintendent. 1924, c. 47, s. 10, *part*.

Distribution
of guarantee
capital stock.

273. No mutual or cash-mutual insurance corporation with a guarantee capital stock which has ceased to do new business shall divide among its stockholders any part of its assets or guarantee capital except income from investments until it shall have performed or cancelled its policy obligations and upon proof to the Superintendent that such policy obligations have been performed or cancelled. 1924, c. 47, s. 10, *part*.

*Mutual and Cash-Mutual Insurance Corporations:
Their Internal Management.*

Application of
ss. 275-290.

274. Sections 275 to 290 shall apply only to mutual and cash-mutual fire insurance corporations and to mutual live stock and mutual weather insurance corporations. 1924, c. 47, s. 10, *part*.

Premium
note plan.

275.—(1) Any person insured under a policy issued by a corporation shall, from the date upon which the insurance becomes effective, be deemed a member of such corporation.

Member's
liability.

(2) No member shall be liable in respect of any loss of claim or demand against the corporation beyond the amount unpaid upon his premium note.

Members
withdrawing.

(3) Any member may, with the consent of the directors, withdraw from the corporation upon such terms as the directors may lawfully prescribe subject to the provisions of *The Insurance Act*. 1924, c. 47, s. 10, *part*.

Rev. Stat.
c. 222.

Annual
meeting for
election of
directors.

276.—(1) A meeting of the shareholders and members for the election of directors shall be held within the first two months of every year at such time and place as may be prescribed by the by-laws of the corporation.

Annual
statement.

(2) Before the election the annual statement for the year ending on the previous 31st day of December shall be presented and read. 1924, c. 47, s. 10, *part*.

Failure
to elect
directors.

277. If an election of directors is not made on the day on which it ought to have been made the company shall not for that cause be dissolved, but the election may be held on a subsequent day, at a meeting to be called by the directors or as otherwise provided by the by-laws of the company, and in such case the directors then in office shall continue to hold office until their successors are elected. 1924, c. 47, s. 10, *part*.

Notice of
annual or
special
meetings.

278.—(1) Notice of every annual, general or special general meeting of the corporation shall be sent by post to every shareholder and member and shall be published in a

newspaper published at or near the place where the head office is located at least two weeks previous to the day of the meeting.

(2) The directors may convene a general meeting of the corporation at any time. 1924, c. 47, s. 10, *part*. Power of directors.

279.—(1) A member of the corporation shall be entitled at all meetings of the corporation to the number of votes in proportion to the amount of insurance held by him according to the following scale: Under \$1,500, one vote; \$1,500 to \$3,000, two votes; and \$3,000 or over, three votes; but no member shall be entitled to vote while in arrear for any assessment or cash payment due by him to the corporation. Voting powers of members.

(2) Where a policy on the premium note plan is made to two or more persons one only shall be entitled to vote, and the right of voting shall belong to the one first named on the register of policyholders if he is present, and if not present to the one who stands second, and so on. Where policy made to two or more persons.

(3) Where property is insured by a trustee board any person duly appointed in writing pursuant to its resolution may vote on his behalf. 1924, c. 47, s. 10, *part*. Where properly insured by trustee board.

280. No applicant for insurance shall be competent to vote or otherwise take part in the corporation's proceedings until his application has been accepted by the directors. 1924, c. 47, s. 10, *part*. Right of mere applicants.

281.—(1) No person shall be eligible to be or shall act as a director unless he is a member of the corporation and insured therein for the time he holds office, Qualification of directors.

(a) in the case of a live stock insurance corporation to the amount of not less than \$200; and

(b) in the case of every other corporation to the amount of not less than \$800.

(2) Where the corporation has a share capital, not less than two-thirds of the directors shall also be holders of shares each to the amount of not less than \$1,000 upon which all calls have been paid. Where corporation has a share capital.

(3) The president or director of a member corporation which has the qualifications which would qualify an individual to be a director shall be eligible to be a director of the corporation. Representation of corporations.

(4) Where a partnership has the qualifications which would qualify an individual to be a director of the corporation one member of the partnership shall be eligible to be a director of the corporation. 1924, c. 47, s. 10, *part*. Representation of partnerships.

Number of
directors.

282.—(1) The board shall consist of six, nine, twelve or fifteen directors, as shall be determined by resolution passed at the meeting held under section 250.

Increase or
decrease in
number, how
made.

(2) The number of directors may from time to time be increased or decreased if so determined at a special general meeting of the corporation called for the purpose, or at an annual general meeting, if notice in writing of the intention to propose a by-law for that purpose at such annual meeting is given to the secretary of the corporation at least one month before the holding of the meeting; but the increased or decreased number of directors shall in any such case be six, nine, twelve or fifteen.

Notice of
proposed
change.

(3) Where such a notice has been given to the secretary that fact shall be stated in the notice of the annual general meeting.

Copy of
resolution
and list of
directors to
be filed.

(4) With the copy of the by-law filed with the Superintendent there shall be filed a list of the directors elected thereunder certified under the hands of the chairman and secretary of the meeting. 1924, c. 47, s. 10, *part*.

Remuneration
of directors.

283. At any annual general meeting of the shareholders or members of a corporation, or at any special general meeting thereof, if such purpose was clearly expressed in the notice of the special general meeting, it shall be lawful to enact by-laws for the remuneration of the directors, and a certified copy of every such by-law shall, within seven days after its passing, be filed with the Provincial Secretary. 1924, c. 47, s. 10, *part*.

Retirement
of directors
in rotation.

284. One-third of the directors shall retire annually in rotation and at the first meeting of the directors, or as soon thereafter as possible, it shall be determined by lot which of them shall hold office for one, two or three years respectively, and the determination shall be entered on the minutes of the meeting. 1924, c. 47, s. 10, *part*.

Annual elec-
tion to fill
vacancies.

285. At every annual general meeting thereafter one-third of the total number of directors shall be elected for a period of three years, to fill the places of the retiring directors, who shall be eligible for re-election. 1924, c. 47, s. 10, *part*.

Manager
may be a
director;

his salary.

286. The manager of the corporation, although he has not the qualifications required by section 281, may be a director of the corporation and may be paid an annual salary under a by-law passed as provided by section 283. 1924, c. 47, s. 10, *part*.

Certain
persons not
eligible as
directors.

287.—(1) No agent or paid officer, or officer of the bankers of the corporation, or person in the employment of the corporation, other than the manager, shall be eligible to be elected as a director or shall interfere in the election of directors.

(2) Nothing herein shall apply to a person receiving applications for insurance, or taking to his own use the customary application, survey or policy fee, not exceeding \$1.50 in respect of any one policy, or prevent a director from so doing. 1924, c. 47, s. 10, *part*. Fees of director taking application.

288.—(1) The election of directors shall be held and made by such shareholders and members as attend for that purpose in their proper persons, or in the case of a corporation or partnership by a person authorized in writing to represent it. Election of directors.

(2) The election shall be by ballot.

Ballot.

(3) If two or more members have an equal number of votes, so that less than the whole number to be elected appear to have been chosen directors by a majority of votes, the members present shall proceed to ballot until it is determined which of the persons so having an equal number of votes shall be the director or directors. Case of a tie at an election.

(4) The directors shall at their first meeting after any such election elect by ballot from among themselves a president and vice-president, and the secretary shall preside at such election. 1924, c. 47, s. 10, *part*. Election of president and vice-president.

289. If a vacancy occurs among the directors during the term for which they have been elected by death, resignation, ceasing to have the prescribed qualification, insolvency, or by absence without previous leave of the directors, from three successive regular meetings which shall, *ipso facto* create such vacancy, the vacancy, in the case of a board limited to six directors, shall be filled and in the case of a board limited to a number of directors exceeding six, may be filled, until the next annual general meeting, by any person duly qualified chosen by a majority of the remaining directors as soon as may be after the vacancy occurs, and at the next annual general meeting the vacancy shall be filled for the portion of the term still unexpired. 1924, c. 47, s. 10, *part*. Interim vacancies in office.

290.—(1) Three directors shall constitute a quorum for the transaction of business, and in the case of an equality of votes at any meeting the question shall pass in the negative. Quorum of directors.

(2) A director disagreeing with the majority at a meeting may have his dissent recorded with his reasons therefor. 1924, c. 47, s. 10, *part*. Recording dissent.

General.

291. Subject to the approval of the agreement of amalgamation by Order-in-Council pursuant to the provisions of *The Insurance Act*, the provisions of section 10 of this Act shall apply *mutatis mutandis* to the amalgamation of two or more mutual or cash-mutual insurance corporations. 1924, c. 47, s. 10, *part*. Amalgamation. Rev. Stat. c. 222.

Reserve
fund of
mutual and
cash-mutual
insurance
corporations.

292.—(1) Subject to the provisions of subsection 5 a mutual or cash-mutual insurance corporation may form a permanent reserve fund, to consist of such part of the net profits as may from time to time be set aside by the directors for that purpose or to be made up by annual assessments for that purpose not exceeding, for any single assessment, ten per centum on the premium notes held by the corporation, until the total of the fund reaches two per centum of the corporation insurance in force.

Investment
and income.

(2) Such fund shall be held for the security of the insured and shall be subject to the provisions of this Act relating to the investment of the funds of insurance companies. The income from the fund shall be included in the general receipts of the company and shall constitute a part of the "net profits," if any, as defined in this section.

Use of re-
serve fund.

(3) The fund so accumulated shall be used for the payment of losses and expenses when the cash funds of the company in excess of an amount equal to its liabilities (including guarantee capital if any) are exhausted; and when the said fund is drawn upon the allocation of profits or assessments as aforesaid may be renewed or continued until the limit of accumulation as herein provided is reached.

Reduction
of fund
prohibited.

(4) The said fund may not be reduced by the payment of dividends to shareholders or members or by reduction of current premiums below the limit of two per centum of the insurance in force hereinbefore mentioned, but it may be increased beyond the said limit if the company so desires.

Application
of section.

(5) This section shall not apply to corporations undertaking life insurance nor to purely mutual fire insurance corporations insuring risks other than mercantile or manufacturing, upon the premium note plan, nor to purely mutual live stock or weather insurance companies, carrying on business on the premium note plan. 1924, c. 47, s. 10, *part*.

Incorporation of Fraternal Societies.

Incorporation.

293. The Lieutenant-Governor may, by letters patent, grant a charter to any number of persons, not less than seventy five, of the age of twenty-one years, who petition therefor, constituting such persons and any others who have signed the membership book, and persons who thereafter become members in the fraternal society thereby created, a corporation for the purpose of undertaking any class of insurance for which a fraternal society may be licensed under the provisions of *The Insurance Act*. 1924, c. 47, s. 10, *part*.

Rev. Stat.
c. 222.

Notice.

294. Applicants for incorporation shall immediately prior to the application, publish in at least four consecutive issues of the *Ontario Gazette* notice of their intention to apply, and shall also, if so required, publish elsewhere notice of such intention. 1924, c. 47, s. 10, *part*.

295.—(1) The applicants for the incorporation of a fraternal society may petition the Lieutenant-Governor for the grant of a charter. Petition.

(2) The petition shall show,—

Particulars.

(a) the proposed name of the fraternal society;

(b) the place within Ontario where the head office of the fraternal society is to be situated;

(c) the name in full, the place of residence and the calling of each of the applicants who are to be the first trustees or managing officers of the fraternal society;

(d) such other information as the Provincial Secretary may require.

(3) The petition shall be accompanied by the original membership book or list containing the signatures duly certified, of at least seventy-five persons who thereby agree to become members of the fraternal society if and when incorporated, by a copy of the proposed by-laws of the fraternal society, and by evidence that the approval of the Superintendent to the proposed by-laws and rules has been obtained. Other documents. 1924, c. 47, s. 10, *part*.

296. Within thirty days after the issue of the letters patent, and upon due notice to all members of the society, an organization meeting of the society shall be held at which the by-laws shall be adopted and the officers of the society elected. 1924, c. 47, s. 10, *part*. Organization meeting.

297.—(1) Where a fraternal society licensed under the provisions of *The Insurance Act*, has its head office elsewhere than in Ontario, the grand or other provincial body of the lodges or a majority of the lodges in Ontario may petition the Lieutenant-Governor for the grant of a charter and from the time of the issue of the letters patent, the applicants shall become a corporation for the purpose of undertaking any class of insurance for which a fraternal society may be licensed under the provisions of *The Insurance Act*. Incorporation of foreign fraternal society.
Rev. Stat. c. 222.

(2) The provisions of section 293 shall apply to an incorporation under this section. Application of s. 293.

(3) Before the issue of the letters patent evidence shall be produced to the Provincial Secretary that the approval of the Superintendent to the petition has been secured. 1924, c. 47, s. 10, *part*. Approval of superintendent.

298. An auxiliary or local subordinate body or branch of a licensed fraternal society may be separately incorporated by like proceedings and under the authority of the preceding section. 1924, c. 47, s. 10, *part*. Incorporation of local branch.

Amalgamation
or reinsur-
ance by frater-
nal society.

Rev. Stat.
c. 222.

299.—(1) Subject to the provisions of *The Insurance Act*, any fraternal society may, in the manner herein provided, amalgamate with any other fraternal society or transfer all or any portion of its contracts to or reinsure the same with any insurer licensed for the transaction of life insurance and may enter into all agreements necessary to such amalgamation, transfer or reinsurance.

Agreement
for amalga-
mation, etc.

Proviso.

(2) Notwithstanding anything contained in its Act or instrument of incorporation or its constitution or laws, the governing executive authority may enter into any such agreement on behalf of the society through its principal officer and secretary; provided that no such agreement shall be binding or effective unless and until evidence satisfactory to the Superintendent is produced showing that the principle of amalgamation, transfer or reinsurance has been approved or that the agreement has been confirmed by a vote of the majority of the members present or duly represented at a general or special meeting of the supreme legislative or governing body of the society regularly called. 1925, c. 53, s. 9.

Confirmation
of amalga-
mation.

300. The provisions of subsection 5 of section 10 shall apply *mutatis mutandis* to the amalgamation of two or more fraternal societies. 1925, c. 53, s. 10.

Incorporation of Mutual Benefit Societies.

Incorporation.

Rev. Stat.
c. 222.

301. A mutual benefit society may be incorporated for the purpose of undertaking any class of insurance for which a mutual benefit society may be licensed under the provisions of *The Insurance Act*, and the provisions of this Part relating to fraternal societies shall apply *mutatis mutandis* to the incorporation of mutual benefit societies and to such societies when incorporated.

Name.

(2) The proposed name and style of a mutual benefit society incorporated under the provisions of this Act shall include the words "mutual benefit." 1924, c. 47, s. 10, *part*.

Incorporation of Pension Fund Societies and Employees Mutual Benefit Societies.

Application.

302. Sections 303 to 316 shall apply to pension fund and employees' mutual benefit societies incorporated under the provisions of this Part. 1924, c. 47, s. 10, *part*.

Interpretation

303. In sections 304 to 316:—

"Parent
corporation."

(a) "parent corporation" means the corporation any of whose officers establish a pension fund and employees mutual benefit society under the provisions of this Part;

- (b) "society" means a pension fund and employees "Society." mutual benefit society incorporated under the provisions of this Part. 1924, c. 47, s. 10, *part*.

304. The Lieutenant-Governor may, by letters patent, Charter by letters patent. grant a charter to the president, vice-president, general manager, assistant general manager, cashier, assistant cashier and inspector of any corporation legally transacting business in Ontario under any Act of the Province of Ontario, or to any two of the said officials, with any other of the superior officers, constituting such persons, and the employees of such corporation who join the said society and those who replace them from time to time, a pension fund and employees mutual benefit society, and such society shall be a body corporate and politic. 1924, c. 47, s. 10, *part*.

305.—(1) The applicants for the incorporation of a Application for charter. society may petition the Lieutenant-Governor for the grant of a charter.

- (2) The petition shall show:—

Contents of petition.

- (a) the proposed name of the society;
- (b) the name of the parent corporation;
- (c) the place within Ontario where the head office of the society is to be situated;
- (d) the name in full and place of residence and calling of each of the applicants;
- (e) the names, not less than five, of those who are to be the provisional directors of the society. 1924, c. 47, s. 10, *part*.

306. Notice of the proposed incorporation of such society Notice; contents of. shall be given by publication in the *Ontario Gazette* for four weeks and in such notice shall be given,—

- (a) the exact name of the society;
- (b) the head office of the society; and
- (c) the name of the secretary thereof. 1924, c. 47, s. 10, *part*.

307. The provisional directors shall have power to call First meeting; election of directors. the first meeting of the society, and at such meeting directors may be elected and by-laws may be passed under the provisions of this Act; and upon the passing of such by-laws, a copy thereof shall be filed with the Provincial Secretary within two weeks after the passing thereof and copies of subsequent by-laws in amendment thereof, in addition thereto or diminution therefrom shall also be filed with the Provincial Secretary within two weeks from the passing thereof. 1924, c. 47, s. 10, *part*.

Directors.

308. The affairs of the society shall be administered by a board of directors who shall be appointed or elected in such manner, in such number, with such qualifications, and for such period as are determined by the by-laws; but at the first meeting of the society to be held under this Act five directors shall be elected, subject to addition to such number if so sanctioned by the by-laws, and other officers may be appointed in such manner, with such remuneration, and under such provisions touching their powers and duties as are established by the by-laws. 1924, c. 47, s. 10, *part*.

Powers and
objects of
society.

309. After its incorporation under this Act every pension fund and employees mutual benefit society shall have the power by means of voluntary contribution or otherwise as its by-laws provide, to form a fund, and may invest, hold and administer the same and from and out of the said fund may,—

- (a) provide for the support and payment of pensions to officers and employees of the parent corporation incapacitated by age or infirmity; and,
- (b) upon the death of such officers or employees, pay annuities or gratuities to their widows and minor children or other surviving relatives in such manner as by the by-laws may be specified;
- (c) provide for the payment of benefits to officers and employees of the parent corporation incapacitated by illness, accident or disability;
- (d) upon the death of such officers or employees, pay a funeral benefit in such manner as by the by-laws may be specified. 1924, c. 47, s. 10, *part*.

Power to
pass by-laws.

310.—(1) Every such incorporated society shall have all corporate powers necessary for the purpose of this Act and may make by-laws not contrary to law defining and regulating in the premises, and prescribing the mode of enforcement of, all the rights, powers and duties of,—

- (a) the society;
- (b) the individual members thereof;
- (c) the officers and employees of the parent corporation;
- (d) the widows and orphans or other surviving relatives of such officers and employees;
- (e) the parent corporation.

Additional
by-laws.

(2) Every such incorporated society may also make by-laws as aforesaid for:—

- (a) the formation and maintenance of the said fund;
- (b) the management and distribution thereof generally;

(c) the enforcement of any penalty or forfeiture in the premises;

(d) the government and ordering of all business and affairs of the society.

(3) No such by-law shall have any force or effect unless the same has been sanctioned by the board of directors of the parent corporation. 1924, c. 47, s. 10, *part*. Sanction of parent corporation.

311. All the powers, authority, rights, penalties and forfeitures whatsoever in the premises, whether of the society or of the individual members thereof, or of the officers and employees thereof, or of such widows and orphans and relatives, or of the parent corporation shall be such and such only and may be enforced in such mode and in such mode only, as by such by-laws shall be defined and limited. 1924, c. 47, s. 10, *part*. Enforcement of by-laws.

312. All the revenues of the society, from whatever source derived, shall be devoted exclusively to the maintenance of the society and the furtherance of the objects aforesaid of the said fund and to no other purpose whatever. 1924, c. 47, s. 10, *part*. Revenue.

313. The parent corporation may, and it is hereby authorized to contribute annually or otherwise to the funds of the said society, by a vote of either its directors or its shareholders. 1924, c. 47, s. 10, *part*. Contribution by parent corporation.

314. The interest of any member in the funds of the society shall not be transferable or assignable in any manner whatsoever by way of pledge, hypothecation, sale or security. 1924, c. 47, s. 10, *part*. Prohibition against member assigning interest.

315.—(1) When it is shown to the satisfaction of the Provincial Secretary that the accounts of a society have been materially or wilfully falsified, or where there is filed in the office of the Provincial Secretary a requisition for audit bearing the signatures, addresses and occupations of at least twenty-five per centum of the members of the society and alleging in a sufficiently particular manner to the satisfaction of the Provincial Secretary specific fraudulent or illegal acts, or the repudiation of obligations or insolvency, the Provincial Secretary may appoint one or more accountants or actuaries who shall, under his direction, make a special audit of the books and accounts and report thereon in writing verified upon oath to the Provincial Secretary. Special audit.

(2) Where an audit is requested the persons requesting it shall, with their requisition, deposit with the Provincial Secretary security for the costs of the audit in a sum not exceeding \$300, and where the facts alleged in the requisition appear to the Provincial Secretary to have been partly or Security for costs.

wholly disproved by the audit he may pay the costs thereof partly or wholly out of the deposit.

Duty of
officers to
facilitate
special audit.

(3) The society, its officers and servants shall facilitate the making of such special audit so far as it is in their power, and shall produce for inspection and examination by the person so appointed such books, securities and documents as he may require.

Expense of
special audit.

(4) Subject to the provisions of subsection 2, the expense of such special audit shall be borne by the society, and the auditor's account, when approved in writing by the Provincial Secretary, shall be paid by the society forthwith. 1924, c. 47, s. 10, *part*.

Return to
Provincial
Secretary.

316. Every society formed under this Act shall at all times when thereunto required by the Provincial Secretary make a full return of its assets and liabilities and of its receipts and expenditures for such period and with such details and other information as the Provincial Secretary requires. 1924, c. 47, s. 10, *part*.

Investments.

Authorized
investments.

317.—(1) An insurer incorporated under and subject to the provisions of this Act may invest its capital, reserve, surplus and trust funds in any securities in which, under *The Trustee Act*, trustees may invest trust funds.

Rev. Stat.
c. 150.

Loans.

(2) Any such insurer may lend its funds or any portion thereof on the security of any of the securities mentioned in the preceding subsection.

Loans by
life insurer.

(3) Any such insurer undertaking life insurance, may lend on the security of its own life or endowment policies, but not in excess of the loan values of such policy.

Effect of
constitution
and rules
of certain
insurers.

(4) Where the constitution or rules of a corporation, branch or lodge prescribe the securities in which its funds shall be invested, nothing in this Act shall enlarge the power of investment.

Disposal of
unauthorized
investments.

(5) The Superintendent may request any insurer to dispose of and realize any of its investments acquired after the passing of this Act and not authorized by this Act, and such insurer shall within sixty days after receiving such request absolutely dispose of and realize the said investments, and if the amount realized therefrom falls below the amount paid by such insurer for the said investments the directors of the insurer shall be jointly and severally liable for the payment to such insurer of the amount of the deficiency: provided that if any director present when any such investment is authorized does forthwith, or if any director then absent does within twenty-four hours after he becomes aware of such investment and is able to do so, enter on the minutes of the board of directors his

Directors'
liability.

protest against the same, and within eight days thereafter gives notice of his protest by registered letter to the Superintendent, such director may thereby, and not otherwise, exonerate himself from such liability. 1924, c. 47, s. 10, *part*. Exoneration.

Forfeiture for Nonuser or Discontinuance.

318.—(1) If an insurer incorporated under the law of Ontario whether under this Act or under any general or special Act, does not go into actual *bona fide* operation within two years after incorporation, or if, after an insurer has undertaken contracts, such insurer discontinues business for one year, or if its license remains suspended for one year, or is terminated otherwise than by effluxion of time and is not renewed within the period of sixty days the insurer's corporate powers shall *ipso facto* cease and determine, except for the sole purpose of winding up its affairs; and in any action or proceeding where such nonuser is alleged proof of user shall be upon the insurer, and the Supreme Court upon the petition of the Attorney-General, or of any person interested, may limit the time within which the insurer shall settle and close its accounts, and may for that purpose or for the purpose of liquidation generally appoint a receiver. When charter to be forfeited for non-user or discontinuance.

(2) No such forfeiture shall affect prejudicially the rights of creditors as they exist at the date of the forfeiture. 1924, c. 47, s. 10, *part*. Rights of creditors.

Winding Up.

319.—(1) The provisions of Part XIV of this Act relating to the winding up of companies shall apply to insurers incorporated under or subject to the provisions of this Act except where inconsistent with this Part. Application of Part XIV.

(2) Where the company, corporation or society is not constituted exclusively or chiefly for insurance purposes and the insurance branch and fund are completely severable from every other branch and fund of the company, corporation or society, the word "insurer" for the purposes of the following sections, shall mean only the insurance branch of the company, corporation or society. 1924, c. 47, s. 10, *part*. "Insurer," etc., meaning of.

320.—(1) When an insurer incorporated under or subject to the law of Ontario proposes to go into voluntary liquidation, at least one month's notice shall be given to the Superintendent of the intention to voluntarily wind up the insurer. Notice to Superintendent.

(2) The notice shall state the date at which contracts are to cease to be taken by the insurer also the name and address of the insurer's liquidator or the intention of the insurer to apply on a stated date for the appointment of a liquidator. 1924, c. 47, s. 10, *part*. Contents of notice.

Consent of Superintendent to voluntary winding up.

(3) No fraternal society to which this Act applies shall go into voluntary liquidation or otherwise arrange for the winding up of its affairs without the written consent of the Superintendent. 1925, c. 53, s. 11.

Unearned premium.

321. Where any insurer is wound up each person contracted with on the cash plan shall be entitled to a refund from the insurer of the unearned proportion of the cash premium calculated from the date at which the insurer, according to the notice, ceased to undertake contracts; but this shall not affect any other remedy which such person shall have against the insurer. 1924, c. 47, s. 10, *part*.

Liquidator may reinsure policyholders.

322.—(1) Upon a winding up under this Act, the liquidators may without the consent of the policyholders, arrange for the reinsurance of the contracts of its policyholders, in some duly licensed insurer, and for the purpose of securing such reinsurance, the entire assets of the insurer in Ontario shall be available except the amount required to pay the claims of the preferred creditors, the amount of the costs of liquidation, and the amount required to pay claims accrued under the insurers policy contracts, of which notice has been received by the insurer prior to the date such reinsurance is effected, all of which payments shall be a first charge upon the said assets of the insurer, and creditors of the insurer other than the policyholders and said preferred creditors shall be entitled to receive a dividend on their claims only if the said assets are more than sufficient to provide for the payments aforesaid and for the reinsurance of the contracts of the said policyholders.

Partial reinsurance if assets insufficient.

(2) If the said assets of the insurer are insufficient to provide for the payment specified in the next preceding subsection and for the reinsurance of the contracts of the said policyholders in full, the reinsurance may be effected for such a percentage of the full amount of the contracts as the said assets will secure.

Approval by Court and superintendent.

(3) No contract of reinsurance made in pursuance of this section shall become effective until approved by the Court and by the Superintendent.

Application, Part XIV.

(4) In the event of the reinsurance provided for by this section being effected, the Court may in its discretion declare that any section of Part XIV of this Act shall not apply, and on such declaration being made the section so specified shall cease to apply to any of the parties concerned in the liquidation.

Employment of assets where complete reinsurance not effected.

(5) If the liquidator fails to secure the reinsurance of the policyholders, in full or for a percentage thereof as hereinbefore provided, the said assets shall, subject to the payment of the costs of liquidation and the preferred claims be avail-

able to pay the claims of the policyholders calculated as at the date of winding-up in the manner provided by *The Insurance Act*. Rev. Stat. c. 222.

(6) Nothing in this section shall prejudice or affect the priority of any mortgage lien or charge upon the property of the insurer. 1924, c. 47, s. 10, *part*. Secured creditors not affected.

323.—(1) Where, in the case of a fraternal society endowment or expectancy insurance is transacted and there exists an endowment fund separate and distinct from the life insurance fund then by resolution duly passed at a general meeting, ordinary or special, after at least one month's notice of such intended resolution, the society may determine that the endowment or expectancy shall be discontinued, and that the endowment or expectancy fund shall be distributed *pro rata* among the members then in good standing who are contributing to such fund according to the total contribution of such member. Resolution for distribution of endowment funds.

(2) After the resolution has been assented to by the Superintendent and filed with the Provincial Secretary, the executive officers may proceed to ascertain the persons intended to rank upon the fund and may distribute the fund among those so entitled and such distribution shall discharge the society and all executive officers thereof from all further or other liability in respect of such fund and of the endowment or expectancy contracts undertaken by the society. Distribution of funds; effect of.

(3) If all the members interested in the endowment or expectancy fund are also interested as holders of life insurance contracts, the general meeting, instead of determining that the endowment or expectancy fund shall be distributed, may determine that such fund shall be converted into or merged in a life insurance fund and after the resolution has been assented to and filed as provided in the preceding subsection, the endowment or expectancy fund shall become and be a life insurance fund. 1924, c. 47, s. 10, *part*. Conversion into life insurance fund.

324. Notwithstanding anything in this Act or in *The Insurance Act*, where an insurer is being wound up voluntarily the Superintendent may renew or extend the license of any insurer for the purpose of its winding up. 1924, c. 47, s. 10, *part*. Renewal or continuance of license for winding-up purposes. Rev. Stat. c. 222.

325.—(1) In addition to the provisions of the preceding sections an insurer may be wound up by order of the Supreme Court whenever its license has expired or been withdrawn under the provisions of *The Insurance Act*, and has not been renewed after such expiry or withdrawal. Winding up under order of the Court. Rev. Stat. c. 222.

(2) Where an insurer is wound up under the provisions of subsection 1 the winding up shall be deemed to commence at the beginning of the day from which the license of the insurer expired or was cancelled. 1924, c. 47, s. 10, *part*. When winding up commences.

Books, etc.,
of corporation
as evidence.

326. The books, accounts and documents of an insurer and the entries in the books of its officers or liquidators shall be *prima facie* evidence of the matters to which they relate as between an alleged debtor or contributory and the insurer. 1924, c. 47, s. 10, *part.*

SCHEDULE.

FORM 1.

(Section 4 (2).)

PETITION.

TO HIS HONOUR Etc.

Lieutenant-Governor of the Province of Ontario:

THE PETITION OF
.....
.....
.....
.....Humbly sheweth as follows:—

1. Your petitioners are desirous of obtaining Letters Patent, under the provisions of *The Companies Act*, constituting your petitioners and such others as may become shareholders in the Company thereby created, a body corporate and politic under the name of *The Company (Limited)*, or such other name as shall appear to Your Honour to be proper.

2. Your petitioners have satisfied themselves that the corporate name under which incorporation is sought is not on any public ground objectionable, and that it is not that of any known company, incorporated or unincorporated, or of any partnership or individual, or any name under which any known business is being carried on, or so nearly resembling the same as to deceive.

3. Your petitioners have satisfied themselves that no public or private interest will be prejudicially affected by the incorporation of your petitioners.

4. Each of your petitioners is of the full age of twenty-one years.

5. The object for which incorporation is sought is to.....

6. The head office of the Company will be at.....

7. The amount of the capital stock of the company is to be..... dollars.

8. The stock is to be divided into..... shares of
.....dollars each.

9. The said
.....
are to be provisional directors of the company.

10. By subscribing therefor in a Memorandum of Agreement, duly
executed in duplicate, with a view to the incorporation of the
company, your petitioners have taken the amount of stock set
opposite their respective names, as follows:—

Petitioners.	Amount of stock subscribed for.
.....	\$.....
.....	\$.....
.....	\$.....
.....	\$.....

YOUR PETITIONERS therefore pray that Your Honour may be
pleased to grant Letters Patent constituting your peti-
tioners and the persons who have become subscribers
to the Memorandum of Agreement and such other per-
sons as may become shareholders in the company, a
body corporate and politic for the due carrying out of
the undertaking.

And your petitioners, as in duty bound, will ever
pray, etc.

Dated at.....this.....day of....., 19 ..

Signatures of witnesses	Signatures of petitioners
	
	
	
	
	

FORM 2.

(Section 4 (3).)

(To be executed in duplicate; one duplicate to be deposited in the office of the Provincial Secretary.)

(Name of Company concluding with the word) (LIMITED.)

MEMORANDUM OF AGREEMENT AND STOCK-BOOK.

WE the undersigned hereby severally covenant and agree each with the others to become incorporated as a company under the provisions of *The Companies Act* under the name of..... (LIMITED), or such other name as the Lieutenant-Governor may give to the company, with a capital of.....dollars, divided into.....shares of.....dollars each.

AND WE hereby severally subscribe for and agree to take the respective amounts of the capital stock of the said company set opposite our respective names as hereunder written, and to become shareholders in such company to the said amounts.
Witness our hands and seals.

Name of Subscriber.	Seal	Amount of sub- scription.	Date and place of subscription.		Residence of Subscriber.	Name of Witness.
			Date.	Place.		

FORM 3.

(Section 6 (2).)

PETITION FOR INCORPORATION WITHOUT SHARE CAPITAL.

TO HIS HONOUR..... Etc.,
Lieutenant-Governor of the Province of Ontario;

THE PETITION OF

.....

.....

.....*Humbly sheweth as follows:*

1. Your petitioners are desirous of obtaining Letters Patent, under the provisions of *The Companies Act*, constituting your petitioners and such others as may become members of the corporation thereby created, a body corporate and politic without share capital, under the name of.....or such other name as shall appear to Your Honour to be proper.

2. Your petitioners have satisfied themselves that the corporate name under which incorporation is sought is not on any public ground objectionable, and that it is not that of any known company, incorporated or unincorporated, or of any partnership or individual, or any name under which any known business is being carried on, or so nearly resembling the same as to deceive.

3. Your petitioners have satisfied themselves that no public or private interest will be prejudicially affected by the incorporation of your petitioners.

4. Each of your petitioners is of the full age of twenty-one years.

5. The object for which incorporation is sought is to.....

6. The said

are to be the provisional directors of the corporation.

7. Your petitioners have signed a memorandum of agreement in duplicate, setting out the purposes and objects of incorporation and provisions for administering the affairs of the corporation, and have undertaken that the said corporation shall be carried on without the purposes of gain for its members, and that any profits or other accretions to the corporation shall be used in promoting its objects.

YOUR PETITIONERS therefore pray that Your Honour may be pleased to grant Letters Patent constituting your petitioners and such others as have become subscribers to the Memorandum of Agreement and such persons as may thereafter become members of the corporation, a body corporate and politic for the due carrying out of the undertaking.

And your petitioners, as in duty bound, will ever pray,
etc.

Dated at.....this.....day of....., 19 ..

Signatures of witnesses.	Signatures of petitioners.
	
	
	
	
	

R.S.O. 1914, c. 178, Form 3.

FORM 4.

(Section 6 (3).)

Memorandum of Agreement of the.....
made, and entered into this.....day of....., 19 ..

1. We the undersigned hereby severally covenant and agree each with the others to become incorporated under the provisions of *The Companies Act* as a corporation without share capital for the purposes and objects following: (*Setting out the objects of the corporation.*)

2. The subscribers shall be the first members, and it shall rest with the directors to determine the terms and conditions on which subsequent members shall from time to time be admitted.

3. The following shall be the first directors of the corporation:—

4. The first directors shall hold office until the first general meeting, and unless otherwise provided by the members in general meeting the subsequent directors shall hold office for one year or until their successors are appointed.

5. Any member may transfer his interest in the corporation by instrument in writing, signed both by the transferor and transferee and duly registered with the corporation.

6. The first general meeting shall be held at such time, not being more than two months after incorporation, and at such place as the directors may determine.

7. Subsequent general meetings shall be held at such time and place as may be prescribed by the corporation in general meeting; and, if no other time or place is prescribed, a general meeting shall be held on the fourth Wednesday in January in every year, at such place as may be determined by the directors.

8. The directors may, whenever they think fit, and they shall upon a requisition made in writing by any five or more members, convene a general meeting.

9. The requisition shall express the object of the meeting proposed to be called, and shall be left at the office of the corporation.

10. Upon the receipt of such requisition the directors shall forthwith convene a general meeting, and, if they do not convene the same within twenty-one days of the receipt of the requisition, the

requisitionists or any other five members may themselves convene a meeting.

11. At least ten days' notice of any general meeting, specifying the place, the day, and the hour of meeting, and in case of special business the general nature of such business shall be given to the members in the manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the corporation in general meeting, but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

12. If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if convened upon the requisition of the members shall be dissolved. In any other case, it shall stand adjourned to the same day in the following week, at the same hour and place; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die*.

13.—(1) The chairman (if any) of the directors shall preside as chairman at every general meeting of the corporation.

(2) If there is no such chairman, or if at any meeting he is not present, the members present shall choose one of their number to be chairman of the meeting.

14. The chairman may, with the consent of the meeting, adjourn it from time to time, and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

15. At any general meeting, unless a poll is demanded, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the minutes of proceedings of the corporation shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

16. If a poll is demanded, the same shall be taken in such manner as the chairman directs, and the result shall be deemed to be the resolution of the corporation in general meeting.

17. With the consent in writing of all the members, a general meeting may be convened on shorter notice than ten days and in any manner which such members think fit.

18. The presence in person or by proxy of either at least thirty members or of one-fourth of the members shall be necessary to constitute a quorum at general meetings.

19. Until otherwise determined by special resolution, every member shall have one vote.

20. Votes may be given either personally or by proxy, and the instrument appointing a proxy shall be in writing under the hand of the appointer, or if such appointer is a corporation under its common seal, and shall be attested by at least one witness, and no person shall be appointed a proxy who is not a member of the corporation.

21. A resolution signed by all the directors shall be as valid and effectual as if it had been passed at a general meeting of the directors duly called and constituted.

22. The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting shall be determined by the corporation in general meeting.

23. The affairs of the corporation shall be managed by the directors, who may pay all expenses of the incorporation and may exercise all such powers of the corporation as are not by *The Companies*

Act or by this memorandum required to be exercised by the corporation in general meeting, subject, nevertheless, to any regulations of this memorandum, to the provisions of that Act and to such regulations not inconsistent with such regulations or provisions as may be prescribed by the corporation in general meeting; but no regulation made by the corporation in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made. The continuing directors may act notwithstanding any vacancy in their body.

24.—(1) The office of director shall be vacated:—

(a) If he holds any other office or place of profit under the corporation;

(b) If he is concerned in or participates in the profits of any contract with the corporation.

(2) No director shall vacate his office by reason of his being a shareholder or member of any corporation which has entered into any contract with or done any work for the corporation of which he is a director, but he shall not vote in respect of such contract or work, and if he votes his vote shall not be counted.

25. A retiring director shall be eligible for re-election.

26. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled, the meeting shall stand adjourned till the same day in the next week, at the same hour and place and if at such adjourned meeting the places of the vacating directors are not filled, the vacating directors, or such of them as have not had their places filled shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled.

27. The corporation may, from time to time, in general meeting increase or reduce the number of directors, and may also determine in what rotation any such increased or reduced number is to go out of office.

28. Any casual vacancy occurring in the board of directors may be filled by the directors but any person so chosen shall retain his office so long as the vacating director would have retained the same if no vacancy had occurred.

29. The corporation in general meeting, by a resolution, of which notice has been given in the notice calling the meeting, may remove any director before the expiration of his period of office, and may, by resolution, appoint another person in his stead; the person so appointed shall hold office during such time as the director in whose place he was appointed would have held the same if he had not been removed.

30.—(1) The directors may meet for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business.

(2) Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote.

(3) A director may at any time summon a meeting of the directors.

31. The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present, the directors present shall choose one of their number to be chairman of the meeting.

32. The directors, by resolution entered upon the minutes, may delegate any of their powers to committees consisting of such member or members of their body as they think fit, and a committee so formed shall, in the exercise of its powers so delegated, conform to any regulations that may be imposed on it by the directors.

33. A committee may elect a chairman, and if no such chairman is elected, or if he is not present, the members present shall choose one of their number to be chairman of the meeting.

34. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

35. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such director or person so acting, or that they, or any of them, were disqualified, shall be as valid as if every such person had been duly appointed and was qualified to be a director; but it shall not be necessary to give notice of a meeting of the directors to a director who is not in Ontario.

In testimony whereof we have hereunto set our hands and affixed our seals.

R.S.O. 1914, c. 178, Form 4.

FORM 5.

(Section 104 (1).)

Statement in lieu of prospectus

filed by

pursuant to section 104.

Limited,

Presented for filing by

The Companies Act.

STATEMENT IN LIEU OF PROSPECTUS.

The nominal share capital of

\$.....

the company.

Divided into

Shares of \$

each.

“ “ “

“ “ “

“ “ “

Names, descriptions and ad-

resses of directors or pro-

posed directors.

Minimum subscription (if any)

on which the company may

proceed to allotment.

Number and amount of shares and debentures agreed to be issued as fully or partly paid-up otherwise than in cash. The consideration for the intended issue of those shares and debentures.	1.	shares of	fully
		paid.	
	2.	\$	shares upon which per share credited
		as paid.	
	3.	debenture	\$
	4.	Consideration.	

Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company. Amount (in cash, shares or debentures) payable to each separate vendor.

Amount, if any, paid or payable (in cash or shares or debentures) for any such property, specifying amount, if any, paid or payable for goodwill.	Total purchase price, \$
	Cash " " \$
	Shares " " \$
	Debentures " " \$
	Goodwill " " \$

Amount, if any, paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company or,	Amount paid
	" payable

Rate of commission	Rate per cent.
--------------------------	----------------

Estimated amount of preliminary expenses

Amount paid or intended to be paid to any promoter.	Name of promoter.
	Amount \$

Consideration for payment.	Consideration
----------------------------	---------------

Dates of, and parties to every material contract (other than contracts entered into in the ordinary course of business intended to be carried on by the company or entered into more than two years before the filing of this statement).

Time and place at which the contracts or copies thereof may be inspected.

Names and addresses of the auditors of the company (if any).

Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm,

the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.

Whether the articles contain any provisions precluding holders of shares or debentures receiving and inspecting balance sheets or reports of the auditors or other reports. Nature of the Provisions.

(Signatures of the persons above named as directors or proposed directors, or of their agents authorized in writing.)

.....
.....
.....

R.S.O. 1914, c. 178, Form 5.

FORM 6.

Instrument of Proxy.

(Section 53 (4).)

Company, Limited.
of

I
a shareholder of
hereby appoint
(*naming the proxy*) as my proxy to vote for me and on my behalf
at the meeting of the company, to be
held on the day of , 19 and at any
adjournment thereof.

Dated this day of , 19

Note.—

- (1) Where the appointor is a corporation or an officer of it the necessary changes must be made in the form.
- (2) Where the instrument is signed by a corporation its common seal must be affixed.

R.S.O. 1914, c. 178, Form 6.

CHAPTER 219.

The Extra Provincial Corporations Act.

Interpre-
tation.**1.** In this Act,"Extra Pro-
vincial Cor-
poration."

(a) "Extra provincial corporation" shall mean a corporation created otherwise than by or under the authority of an Act of this Legislature;

"Minister."

(b) "Minister" shall mean that member of the Executive Council charged for the time being with the administration of this Act;

"Regula-
tions."

(c) "Regulations" shall mean regulations made by the Lieutenant-Governor in Council. R.S.O. 1914, c. 179, s. 2.

Corporations
which do not
require
license.**2.** Extra provincial corporations of the classes mentioned in this section shall not be required to take out a license under this Act:—

Class 1. Corporations created by or under the authority of an Act of the Legislature of the late Province of Upper Canada, or by charter of the Government of that Province;

Class 2. Corporations created by or under the authority of an Act of the Legislature of the late Province of Canada, or by Charter of the Government of that Province, and carrying on business in Ontario on the 1st day of July, 1900;

Class 3. Corporations which had before the 1st day of July, 1900, received from the Government of Ontario a license to carry on business in Ontario, or had been authorized by Act of this Legislature to carry on business in Ontario while such license or Act is in force;

Rev. Stat.
cc. 222, 223.

Class 4. Corporations now or hereafter licensed or registered under the provisions of *The Insurance Act* or of *The Loan and Trust Corporations Act*;

Rev. Stat.
c. 29.

Class 5. Corporations liable to payment of taxes imposed by *The Corporations Tax Act*, or corporations licensed under the provisions of *The Liquor Control Act*, relating to brewers and distillers;

Rev. Stat.
c. 257.

Class 6. Corporations not having gain for any of their objects. R.S.O. 1914, c. 179, s. 3.

3. Extra provincial corporations of the classes mentioned in this section are required to take out a license under this Act:— Corporations which require license.

Class 7. Corporations other than those mentioned in section 2 created by or under the authority of an Act of the Legislature of the late Province of Canada, or by charter of the Government of that Province authorized to carry on business in Upper Canada, but not carrying on business in Ontario on the 1st day of July, 1900;

Class 8. Corporations created by or under the authority of an Act of the Dominion of Canada, and authorized to carry on business in Ontario;

Class 9. Corporations not coming within any of the classes 1 to 8. R.S.O. 1914, c. 179, s. 4.

4. A corporation coming within class 7 or 8 shall, upon complying with the provisions of this Act and the regulations, receive a license to carry on its business and exercise its powers in Ontario. R.S.O. 1914, c. 179, s. 5. Rights to license when within class 7 or 8.

5. A corporation coming within class 9 may, upon complying with the provisions of this Act and the regulations, receive a license to carry on the whole or such parts of its business and exercise the whole or such parts of its powers in Ontario as may be embraced in the license; subject however to such limitations and conditions as may be specified therein. R.S.O. 1914, c. 179, s. 6. Rights to license when within class 9.

6.—(1) No extra provincial corporation coming within class 7, 8 or 9 shall carry on within Ontario any of its business unless and until a license under this Act so to do has been granted to it, and unless such license is in force; and no company, firm, broker, agent or other person shall, as the representative or agent of, or acting in any other capacity for any such extra provincial corporation, carry on any of its business in Ontario unless and until such corporation has received such license and unless such license is in force. Carrying on business without license prohibited.

(2) Taking orders for or buying or selling goods, wares, and merchandise by travellers or by correspondence, if the corporation has no resident agent or representative or no office or place of business in Ontario, shall not be deemed a carrying on of business within the meaning of this Act. R.S.O. 1914, c. 179, s. 7, (1, 2). Exception.

7. The onus of proving that a corporation has no resident agent or representative and no office or place of business in Ontario, shall, in any prosecution for an offence against the Onus of proof.

last mentioned section, rest upon the accused. R.S.O. 1914, c. 179, s. 8.

Application
for license.

8.—(1) An extra provincial corporation coming within class 7, 8 or 9 may apply to the Lieutenant-Governor in Council for a license to carry on its business or part thereof, and to exercise its powers or part thereof, in Ontario.

Conditions
of license.

(2) No limitations or conditions shall be included in any such license which would limit the rights of a corporation coming within class 7 or class 8, to carry on in Ontario all such parts of its business and to exercise in Ontario all such parts of its powers as by its Act or charter of incorporation it may be authorized to carry on and exercise therein. R.S.O. 1914, c. 179, s. 9.

Regulations
by Order-in-
Council.

9.—(1) The Lieutenant-Governor in Council may make regulations which shall be published in the *Ontario Gazette* respecting,—

Evidence
upon
application.

(a) the evidence required, upon the application for a license, as to the creation of the corporation, its powers and objects and its existence as a valid and subsisting corporation;

Service of
process.

(b) the appointment and continuance by the corporation of a person or company as its representative in Ontario on whom service of process, notices or other proceedings may be made, and the powers to be conferred on such representative;

Forms.

(c) the forms of licenses, powers of attorney, applications, notices, statements, returns and other documents relating to applications and other proceedings under this Act.

Special
Orders-in-
Council.

(2) The Lieutenant-Governor in Council may make orders as to particular cases where the general regulations may not be applicable or where they would cause unnecessary inconvenience or delay. R.S.O. 1914, c. 179, s. 10.

Proof to be
furnished
on applica-
tion.

10. Upon the application for a license the applicant shall establish to the satisfaction of the Minister, or such other officer as may be charged by him to report thereon, that the provisions of this Act and the regulations have been complied with; and the Minister, Deputy Minister or such other officer may, for that or for any other purpose under this Act, take evidence under oath. R.S.O. 1914, c. 179, s. 11.

Dealing
with real
estate.

11. A corporation receiving a license may, subject to the limitations and conditions of the license, and subject to the provisions of its own charter, Act of incorporation or other instrument creating it, acquire, hold, mortgage, alienate and otherwise dispose of real estate in Ontario and any

interest therein to the same extent and for the same purposes as if such corporation had been incorporated under *The Companies Act* with power to carry on the business and exercise the powers embraced in the license. R.S.O. 1914, c. 179, s. 12. Rev. Stat. c. 218.

12. Notice of the granting of a license under this Act shall be given in the *Ontario Gazette*, and a copy of such *Gazette* containing such notice shall be *prima facie* evidence, in all proceedings by and against the corporation and otherwise under this Act or otherwise, of the granting of the license and of the terms thereof mentioned in the notice; and a copy of the license certified by the Minister or his deputy shall be sufficient evidence of the license before all courts and tribunals. R.S.O. 1914, c. 179, s. 13. Notice of granting license.

13. A corporation receiving a license and a corporation coming within class 3 shall, on or before the 8th day of February in every year during the continuance of the license, make and transmit to the Minister a statement under oath and according to a form approved of by the Lieutenant-Governor in Council, containing information similar to that required under section 138 of *The Companies Act*, or so much thereof or such additional information as may be required by such form, and the Minister may at any time require the corporation to supply further and other information. R.S.O. 1914, c. 179, s. 14. Returns to be made by licensees.
Rev. Stat. c. 218.

14.—(1) If a corporation receiving a license makes default in observing or complying with the limitations and conditions of such license or the provisions of section 13, or the regulations respecting the appointment and continuance of a representative in Ontario, the Lieutenant-Governor in Council may suspend or revoke such license in whole or in part, and may remove such suspension or cancel such revocation and restore such license. Suspension, cancellation or restoration of license after default of licensee.

(2) Notice of such suspension, revocation, removal or restoration shall be given in the *Ontario Gazette*. R.S.O. 1914, c. 179, s. 15. Publication.

15.—(1) If any extra provincial corporation coming within class 7, 8 or 9, contrary to the provisions of section 6 carries on in Ontario any part of its business, such corporation shall incur a penalty of \$50 for every day upon which it so carries on business; and so long as any extra provincial corporation coming within class 9 remains unlicensed it shall not be capable of maintaining any action or other proceeding in any court in Ontario in respect of any contract made in whole or in part within Ontario in the course of or in connection with business carried on contrary to the provisions of said section 6. R.S.O. 1914, c. 179, s. 16 (1); 1918, c. 20, s. 31. Penalty for carrying on business without a license.

Saving.

(2) Upon the granting or restoration of the license, or the removal of any suspension thereof, such action or other proceeding may be prosecuted as if such license had been granted or restored or such suspension had been removed before the institution thereof. R.S.O. 1914, c. 179, s. 16 (2).

Power to
remit penal-
ties or costs.

16. The Lieutenant-Governor in Council may on or after granting a license remit in whole or in part any penalty incurred by the corporation receiving the license or by any representative or agent thereof, and may also remit in whole or in part the costs of any action or proceeding commenced for the recovery of any such penalty, and thereupon the whole or such part of the costs, as the case may be, shall not be recoverable. R.S.O. 1914, c. 179, s. 17.

Penalties,
how recover-
able.

17. The penalties mentioned in this Act shall be recoverable only by an action at the suit of or brought with the written consent of the Attorney-General of Ontario, which shall be commenced within six months after the liability for such penalty was incurred, and not afterwards. R.S.O. 1914, c. 179, s. 18.

Fees on
licenses.

18. There shall be paid to His Majesty for the public uses of Ontario for every license under this Act, such fees as may be prescribed by the Lieutenant-Governor in Council. R.S.O. 1914, c. 179, s. 19.

Granting
license as to
real estate
to other
corporations.

19.—(1) An extra provincial corporation which is not required by this Act to take out a license may apply for and receive a license authorizing it, subject to the limitations and conditions of the license, and subject to the provisions of its own charter, Act of incorporation or other creating instrument, to acquire, hold, mortgage, alienate and otherwise dispose of real estate in Ontario and any interest therein to the same extent and for the same purposes as if such corporation had been incorporated under *The Companies Act* with power to carry on the business or exercise the powers embraced in the license.

Rev. Stat.
c. 218.

Dispensing
with s. 13.

(2) The Lieutenant-Governor in Council may by such license dispense with compliance by such corporation in whole or in part with the provisions of section 13. R.S.O. 1914, c. 179, s. 21.

Annual
report.

20. A statement showing the licenses issued under this Act during the preceding calendar year and the authorized capital stock of the company licensed and the fee paid for each license shall be laid before the Assembly at each session thereof. R.S.O. 1914, c. 179, s. 22.

CHAPTER 220.

The Telegraph Companies Act.

1. Subject to the provisions of *The Public Service Works on Highways Act*, every telegraph association or company, subject to the legislative authority of Ontario, and incorporated under chapter 67 of the Consolidated Statutes of Canada, or under any general Act passed subsequently thereto, and prior to *The Companies Act*, passed in the seventh year of His late Majesty's reign, chaptered 34, may construct the lines of telegraph designated in its instrument of incorporation upon any lands purchased by the company, or the right to carry its line over which has been conceded to it by the person having a right to make such concession, and along and upon any of the public roads and highways, or across any of the waters within Ontario by the erection of the necessary fixtures, including posts, piers or abutments for sustaining the wires or cables of such lines, provided the same are not so constructed as to incommode the public use of such roads or highways, or to impede the free access to any house or other building erected in the vicinity of the same, or injuriously to interrupt the navigation of such waters. R.S.O. 1914, c. 180, s. 2; 1927, c. 28, s. 16.

2. Nothing herein shall confer on any such association or company the right of building a bridge over any navigable water. R.S.O. 1914, c. 180, s. 3.

3. The person or company owning or operating any telegraph line shall, except in the cases provided for in the next following section, transmit all despatches in the order in which they are received, under a penalty of not less than \$20 nor more than \$100, to be recovered by any person whose despatch has been postponed out of its order. R.S.O. 1914, c. 180, s. 4.

4. Any message in relation to the administration of justice, the arrest of criminals, the discovery or prevention of crime, and Government messages or despatches, shall always be transmitted in preference to any other message or despatch, if required by persons connected with the administration of justice, or any person thereunto authorized by the Provincial Secretary. R.S.O. 1914, c. 180, s. 5.

Temporary assumption of the line by Government.

5. His Majesty may, at any time, assume, and for any length of time retain possession of any such telegraph line and of all things necessary to the efficient working thereof, and may for the same time require the exclusive service of the operators and other persons employed in working such line, and the person or company owning or operating such line shall give up possession thereof, and the operators and other persons so employed shall, during the time of such possession of His Majesty, diligently and faithfully obey such orders, and receive and transmit such despatches as they may be required to receive and transmit by any duly authorized officer of the Government of Ontario, under a penalty not exceeding \$100 for any refusal or neglect to comply with the requirements of this section, to be recovered by the Crown for the public uses of Ontario. R.S.O. 1914, c. 180, s. 6.

Assumption of the property of the line by Government.

6.—(1) His Majesty, at any time after two months' notice to the company or owner of the telegraph line, may assume the possession and property thereof, and thereupon the line and all the property, real or personal, essential to the working thereof, and all the rights and privileges of such company or owner as regards the same shall be vested in the Crown.

Mode of settling the compensation in case of disagreement.

Rev. Stat. c. 52.

(2) If a difference arises between the company or owner and the Crown as to the compensation to be paid therefor, or for the temporary exclusive use thereof under section 5, such difference shall be determined in the manner provided by *The Public Works Act* in the case of land taken without the consent of the owner. R.S.O. 1914, c. 180, s. 7.

Power of municipal corporations and joint stock companies to hold shares.

7.—(1) Any municipal corporation or a joint stock company incorporated under any Act of the late Province of Canada or of Ontario, may subscribe for and hold shares in any telegraph company mentioned in section 1, and may pay the amount of such subscription out of any funds not specially appropriated to any other purpose.

Power of municipality to raise funds.

And to vote.

(2) Such municipal corporation may levy money by rate for paying any such subscription, and, subject to the instrument of incorporation and the by-laws of the telegraph company, may vote upon the shares held by it in such manner and through the intervention of such person or officer as may be determined by the council of the municipal corporation or by the joint stock company. R.S.O. 1914, c. 180, s. 8.

Telephone companies.

8. This Act shall not apply to telephone companies. R.S.O. 1914, c. 180, s. 9.

CHAPTER 221.

The Wharfs and Harbours Act.

1. This Act shall apply to every company heretofore or hereafter incorporated for constructing a pier or wharf, dredging, deepening or making a harbour, or for the erection of a dry dock and marine railway connected therewith. R.S.O. 1914, c. 182, s. 2.

2.—(1) The company may detain any goods, wares or merchandise, or any vessel, boat or craft until the tolls or charges thereon have been paid, and may sell any vessel or boat for the charges for repairs thereof when such charges have remained unpaid for thirty days.

(2) Where the charges for wharfage, or storage dues on goods, wares or merchandise have remained unpaid for thirty days the company, after giving ten days' notice of sale, may, by public auction, sell such goods, wares or merchandise or such part thereof as may be necessary to pay such dues, and shall return any overplus to the owner thereof.

(3) The company shall pay or deliver the surplus, if any, or such of the goods as remain unsold to the person entitled thereto. R.S.O. 1914, c. 182, s. 3.

3. The corporation of the municipality in which any such work is to be constructed may subscribe for, acquire, hold and transfer shares in the company or may direct the head of the municipality to subscribe for such shares in the name of the corporation and to act for the corporation in all matters relating to such shares and the exercise of the rights of the corporation as a shareholder; and the head of the municipality, whether otherwise qualified or not, may vote and act in respect of such shares, subject to any rules and orders in relation to his authority made by the council, and according to his discretion in cases not provided for by the council. R.S.O. 1914, c. 182, s. 4.

4. A company may sell to the corporation of any municipality in which the work is situate, and any such corporation may purchase the undertaking and assets of the company at the value agreed on between them, and the corporation shall in all respects thereafter stand in the place of the company and possess all its powers and authority. R.S.O. 1914, c. 182, s. 5.

CHAPTER 222.

The Insurance Act.

INTERPRETATION.

Interpre-
tation.

1. In this Act, except where inconsistent with the interpretation sections of any Part,

"Accident
insurance."

1. "Accident insurance" means insurance against loss arising from accident to the person of the insured;

"Adjuster."

2. "Adjuster" means a person who, for compensation, not being a barrister or solicitor acting in the usual course of his profession or a trustee or an agent of the property insured, directly or indirectly solicits the right to negotiate the settlement of a loss under a fire insurance policy on behalf of the insured or the insurer, or holds himself out as an adjuster of losses under fire insurance policies;

"Agent."

3. "Agent" means a person who, for compensation, not being a duly licensed insurance broker or a person acting under the authority of subsection 14 or 15 of section 256, solicits insurance on behalf of any insurer or transmits, for a person other than himself, an application for or a policy of insurance to or from such insurer or offers or assumes to act in the negotiation of such insurance or in negotiating its continuance or renewal;

"Appeal."

4. "Appeal" includes a judicial revision or review of a judgment, decision, order, direction, determination, finding or conviction, and a case stated or reserved, and a removal of proceedings by way of *certiorari* or otherwise;

"Automobile."

5. "Automobile" includes all self-propelled vehicles, their trailers, accessories and equipment but not the rolling stock of a railway corporation, as defined by *The Railway Act*;

Rev. Stat.
c. 224.

"Auto-
mobile
insurance."

6. "Automobile insurance" means insurance against liability for loss or damage to persons or property caused by an automobile or the operation thereof and insurance against damage sustained by an automobile or the loss of an automobile;

7. "Beneficiary" means a person designated or appointed as one to whom or for whose benefit insurance money is to be payable; "Beneficiary."
8. "Bond insurance" means guaranteeing the validity and legality of bonds issued by any province of Canada or by any city, county, town, village, school district, municipality or other civil division of any such province or by any private or public corporation; "Bond insurance."
9. "Broker" means a person who, for compensation, not being the licensed agent or a person acting under the authority of subsection 14 or 15 of section 256, acts or aids in any manner in negotiating contracts of insurance or placing risks or effecting insurance or in negotiating the continuance or renewal of such contracts for a person other than himself; "Broker."
10. "Burglary insurance" means insurance against loss or damage by burglary, theft, or house-breaking; "Burglary insurance."
11. "Cash-mutual corporation" means a corporation without share capital or with guarantee capital stock subject to repayment by the corporation, in respect of which the dividend rate is limited by its Act or instrument of incorporation, which is empowered to undertake insurance on both the cash plan and the mutual plan; "Cash mutual corporation."
12. "Chief agency" means the principal office or place of business in Ontario of any licensed insurer having its head office out of Ontario; "Chief agency."
13. "Contract," and "contract of insurance" mean and include every contract the subject matter of which is insurance, but where such words are used in a Part of this Act relating to a specific class of insurance they shall, when so used, mean a contract of the class of insurance to which the Part relates; "Contract,"
"Contract of insurance,"
"Policy."
14. "Credit insurance" means insurance against the insolvency of debtors or against loss from giving or extending credit; "Credit insurance."
15. "Department" means the Department of Insurance of Ontario; "Department."
16. "Due application" includes such information, evidence and material as the Superintendent requires to be furnished; and also the payment of the fees hereinafter prescribed in respect of any application, certificate or document required or issued by virtue of this Act; "Due application."

"Endowment insurance."

17. "Endowment insurance" means an undertaking to pay an ascertained or ascertainable sum at a fixed future date, if the person whose life is insured is then alive, or at his death, if he dies before such date;

"Exchange" or "reciprocal or inter-insurance exchange."

18. "Exchange" or "reciprocal or inter-insurance exchange" means a group of subscribers exchanging reciprocal contracts of indemnity or inter-insurance with each other through the same attorney;

"Explosion insurance."

19. "Explosion insurance" means insurance against damage to property of any kind caused by the explosion of natural or other gas, or caused by bombardment, invasion, insurrection, riot, civil war or commotion or military or usurped power;

"Fidelity insurance."

20. "Fidelity insurance" means insurance against the dishonesty, unfaithfulness, negligence, or default of employees, or trustees, or persons occupying public or private positions of duty, trust, confidence or agency;

"Foreign jurisdiction."

21. "Foreign jurisdiction" includes any jurisdiction other than Ontario;

"Forgery insurance."

22. "Forgery insurance" means insurance against loss sustained by reason of forgery;

"Fraternal society."

23. "Fraternal society" means a corporation, society, order or voluntary association incorporated or formed and carried on for the benefit of its members and their beneficiaries and not for profit, which makes provision by its constitution and laws for payment to beneficiaries of benefits on the death or disability of its members. 1924, c. 50, s. 2, pars. 1-23.

"Governing executive authority."

24. "Governing executive authority" means the executive committee, executive board, management committee, grand executive committee or such other board, committee or body as is charged under the constitution and rules of a fraternal society with its general management between general meetings. 1925, c. 54, s. 2;

"Guarantee insurance."

25. "Guarantee insurance" means any contract whereby the insurer undertakes suretyship; or undertakes to pay money or perform a contract, trust or duty on default of another who is in the first instance liable for such payment or performance; and includes "fidelity insurance," and "title insurance";

"Hail insurance."

26. "Hail insurance" means insurance against loss or damage to property by hail;

27. "Head office" means the place where the chief executive officer of an insurer transacts his business; "Head office."
28. "Inland marine insurance" means marine insurance in respect of subjects of insurance at risk above the harbour of Montreal; "Inland marine insurance."
29. "Inland transportation insurance" means insurance against loss or damage to goods, wares, merchandise or property of any kind, including matter transmitted by mail, in transit otherwise than by water; "Inland transportation insurance."
30. "Insurance" means a contract whereby one party, called the insurer, undertakes for a valuable consideration to indemnify the other, called the insured, against loss or liability from certain risks or perils to which the object of the insurance may be exposed, or from the happening of a certain event; "Insurance."
31. "Insurance fund" or "insurance funds," as applied to a fraternal society or as applied to any corporation not incorporated exclusively for the transaction of insurance, includes all money, securities for money and assets appropriated by the rules of the society or corporation to the payment of insurance liabilities or appropriated for the management of the insurance branch or department or division of the society, or otherwise legally available for insurance liabilities, but does not include funds of a trade union appropriated to or applicable for the voluntary assistance of wage earners unemployed or upon strike; "Insurance fund" or "insurance funds."
32. "Insurance on the cash-plan" means and includes any insurance which is not mutual insurance; "Insurance on the cash-plan."
33. "Liability insurance" means insurance against liability for loss or damage to persons or property not provided for by a specific class of insurance herein defined and arising from any accidental cause; "Liability insurance."
34. "Licensed insurer" means an insurer licensed under the provisions of this Act; "Licensed insurer."
35. "Life insurance" means a contract by which the insurer undertakes to pay insurance money contingently on the death, or on the duration of the life, of a designated human being; "Life insurance."
36. "Live stock insurance" means insurance against loss occasioned by the death or sickness of, or accident to, animals, and includes insurance against the loss of offspring of such animals; "Live stock insurance."

"Lodge."

37. "Lodge" includes a primary subordinate division, by whatever name known, of a fraternal society;

"Minister."

38. "Minister" means that member of the Executive Council charged for the time being by the Lieutenant-Governor in Council with the administration of this Act;

"Mutual benefit society."

39. "Mutual benefit society" means a mutual corporation formed for the purpose of providing sick and funeral benefits for its members, or for this and any other purposes except life insurance, but does not include a pension fund or employees' mutual benefit society incorporated under or subject to the provision of *The Companies Act*;

Rev. Stat.
c. 218.

"Mutual corporation."

40. "Mutual corporation" means a corporation without share capital or with guarantee capital stock subject to repayment by the corporation, in respect of which the dividend rate is limited by its Act or instrument of incorporation, which is empowered to undertake mutual insurance exclusively;

"Mutual insurance."

41. "Mutual insurance" means a contract of insurance in which the consideration is not fixed or certain at the time the contract is made and is to be determined at the termination of the contract or at fixed periods during the term of the contract according to the experience of the insurer in respect of all similar contracts whether or not the maximum amount of such consideration is predetermined;

"Ocean marine insurance."

42. "Ocean marine insurance" means all marine insurance other than inland marine insurance;

"Officer."

43. "Officer" includes any trustee, director, manager, treasurer, secretary or member of the board or committee of management of an insurer or any person appointed by the insurer to sue and be sued in its behalf; 1924, c. 50, s. 2, pars. 24-42.

"Pension fund association."

44. "Pension fund association" means a company, corporation or association incorporated prior to the year 1910, under or by virtue of any law of the province of Quebec, for the purpose of providing a pension for those persons who have contributed to a fund therefor during a certain number of years, and includes any auxiliary funds incorporated for the purpose of guaranteeing the repayment of any sum to those who contributed to such pension fund during a certain number of years, or for the purpose of assuring a life pension to those contributing a sum of money to such pension fund, or for these and similar purposes. 1927, c. 59, s. 2.

45. "Plate glass insurance" means insurance against the breakage of plate or other glass, either local or in transit; "Plate glass insurance."
46. "Policy" means an instrument containing the terms of a contract of insurance; "Policy."
47. "Premium" means the single or periodical payment to be made for the insurance, and includes dues and assessments; "Premiums."
48. "Premium note" means an instrument given as consideration for insurance whereby the maker undertakes to pay such sum or sums as may be legally demanded by the insurer, the aggregate of such sums not to exceed an amount specified in the instrument; "Premium note."
49. "Property insurance" means insurance against loss or damage to property arising from any accidental cause not provided for by a special class of insurance herein defined; "Property insurance."
50. "Regulations" means regulations made under the authority of this Act; "Regulations."
51. "Sick and funeral benefits" includes insurance against sickness, disability or death under which the monies payable upon the happening of sickness, disability or death do not exceed the limits prescribed by section 236 of this Act; "Sick and funeral benefits."
52. "Sickness insurance" means insurance other than life insurance against loss through sickness or disability of the insured not arising from accident or old age; "Sickness insurance."
53. "Steam boiler insurance" means insurance upon steam boilers and pipes, engines and machinery connected therewith or operated thereby, against explosion, rupture and accident and against personal injury or loss of life, and against destruction of or damage to property resulting therefrom; "Steam boiler insurance."
54. "Superintendent" means the superintendent of insurance and includes the deputy superintendent of insurance; "Superintendent."
55. "Title insurance" includes insurance whereby the insurer insures the validity of title to property real or personal or insures the legality and validity of written obligations or of other instruments; "Title insurance."

"Trade Union."

56. "Trade Union" means an organization of wage-earners of a particular trade or industrial calling constituted primarily and operated *bona fide* for regulation of wages and hours of labour as between employers and employed; but does not include a co-operative association or society;

"Upon proof."

57. "Upon proof" as applied to any matter connected with the licensing of an insurer or other person means upon proof to the satisfaction of the Superintendent;

"Weather insurance."

58. "Weather insurance" means the insurance of any kind of property against loss or injury arising from such atmospheric disturbances, discharges or conditions as the contract of insurance shall specify. 1924, c. 50, s. 2, pars. 43-56.

PART I.

SUPERINTENDENT AND HIS DUTIES.

The Department of Insurance.

2. There shall continue to be a Department of Insurance and the same shall be presided over by the Minister. 1924, c. 50, s. 3.

Appointment of Superintendent of Insurance.

3.—(1) There shall continue to be a Superintendent of Insurance who shall be appointed by the Lieutenant-Governor in Council and be the deputy head of the Department.

His duties. Report to Minister.

(2) The Superintendent shall have general supervision of the business of insurance within Ontario and he shall see that the laws, relating to the conduct thereof, are enforced and obeyed, and shall examine and report to the Minister from time to time upon all matters connected with insurance.

Deputy Superintendent of Insurance.

(3) The Lieutenant-Governor in Council may also appoint an officer to be called The Deputy Superintendent of Insurance who shall act as superintendent during the absence or inability of the Superintendent and shall perform such other duties as are assigned to him by this Act, by the Lieutenant-Governor in Council, by the Minister, or by the Superintendent. 1924, c. 50, s. 4.

Evidence.

4. For the purposes of his duties and in the exercise of his powers under this Act or under any other Act relating to insurance, the Superintendent may require to be made and may take and receive affidavits, statutory declarations and depositions, and may examine witnesses upon oath; and he shall have the same power to summon persons to attend as witnesses, and to enforce their attendance, and to compel them to produce books, documents and things, and to give evidence as any court has in civil cases. 1924, c. 50, s. 5.

5. An oath required by this Act to be taken may be administered and certified to by the Superintendent or by any person authorized to administer oaths in Ontario. 1924, c. 50, s. 6.

6. Neither the Superintendent nor any officer under him shall be interested as a shareholder, directly or indirectly, in any insurance company doing business in Ontario. 1924, c. 50, s. 7.

7.—(1) Without a fiat of the Attorney-General, no action or proceeding shall be brought or taken against the Superintendent for anything done or omitted in the performance or intended or supposed performance of his duty under this Act, or under any other Act which imposes duties upon him.

(2) The Superintendent may bring actions and institute proceedings in his name of office for the enforcement of any of the provisions of this Act or for the recovery of fees and penalties payable hereunder.

(3) The Superintendent in his name of office shall be a necessary party to every action or proceeding brought for the recovery of fees and penalties payable hereunder. 1924, c. 50, s. 8.

8.—(1) The Superintendent shall keep in the Department of Insurance the following books, and records:

- (a) A register of all licenses issued pursuant to this Act, in which shall appear the name of the insurer, the address of the head office, the address of the principal office in Canada, the name and address of the chief or general agent in Ontario, the number of the license issued, particulars of the classes of insurance for which the insurer is licensed, and such other information as the Superintendent deems necessary.
- (b) A record of all securities deposited by each insurer with the Minister, naming in detail the several securities, their par value, their date of maturity and value at which they are received as deposit.
- (c) A record of all claims of which notice of dispute has been filed pursuant to the provisions of this Act.

(2) The books and records required by this section to be kept in the Department shall be open to inspection at such time and upon payment of such fees as may be prescribed by the regulations. 1924, c. 50, s. 9.

9.—(1) The Superintendent shall cause to be published in the *Ontario Gazette* in July of each year a list of the insurers licensed at the date of the list, and shall from time to

time cause notice of the license of an insurer not theretofore licensed and notice of suspension or cancellation or revivor of license to be given by publication in the *Ontario Gazette*.

Certificate of Superintendent is evidence of license, etc.

(2) A certificate under the hand and seal of office of the Superintendent that on a stated day an insurer mentioned therein was or was not licensed under this Act, or that any insurer was originally admitted to license or that the license of any insurer was renewed, suspended, revived, revoked or cancelled on a stated day, shall be *prima facie* evidence of the facts stated in the certificate.

Evidence, filing of documents.

(3) A certificate of the filing of any document by this or any former Insurance Act required to be filed in the office of the Provincial Registrar or of the Superintendent shall be *prima facie* evidence of the filing if signed or purporting to be signed by the Deputy or Assistant or by the acting Deputy or Assistant Provincial Registrar or by the Superintendent as the case may be. 1924, c. 50, s. 10.

Superintendent to determine right of insurer to be licensed.

10. The duty of determining the right of any insurer in Ontario to be licensed under this Act, shall devolve upon the Superintendent subject to appeal as hereinafter provided, but nothing in this section shall affect the right of the Lieutenant-Governor in Council or of the Minister to suspend or cancel any license in the exercise of his authority under the provisions of this Act. 1924, c. 50, s. 11.

Decision of Superintendent,

11.—(1) Every decision of the Superintendent upon an application for a license shall be in writing and notice thereof shall be forthwith given to the insurer.

certified copy of.

(2) The insurer, or any person interested shall be entitled, upon payment of the prescribed fee, to a certified copy of the decision.

Stenographic report of evidence.

(3) The evidence and proceedings in any matter before the Superintendent may be reported by a stenographer sworn before the Superintendent to faithfully report the same. 1924, c. 50, s. 12.

Appeal.

12.—(1) An applicant for a license under this Act or any person who deems himself aggrieved by a decision of the Superintendent, may appeal therefrom to the Appellate Division of the Supreme Court.

When to be set down.

(2) The appeal shall be set down for argument at the first sitting of a Divisional Court which commences after the expiration of thirty days from the decision complained of.

Procedure.

(3) The practice and procedure upon and in relation to the appeal shall be the same as upon an appeal from a judgment of a Judge of the Supreme Court, in an action. 1924, c. 50, s. 13.

(4) The Superintendent shall certify to the Registrar of ^{Certificate.} the Appellate Division of the Supreme Court the decision appealed from, his reasons therefor, and the documents, inspection reports, and evidence, if any, and such other information as he had before him in making the said decision. 1926, c. 49, s. 2.

13. The Superintendent may direct to an insurer any in- ^{Conse-}quiry touching the contracts or financial affairs of the in- ^{quences of}surer and the insurer shall be bound to make prompt and ^{failure to}explicit answer to any such inquiry, and shall in case of ^{answer}refusal or neglect to answer be guilty of an offence. 1924, ^{inquiries.}c. 50, s. 14.

14. The Superintendent, or any person authorized under ^{Superin-}his hand or seal of office, shall, at all reasonable times, have ^{tendent to}access to all the books, securities and documents of an insurer, ^{have access}which relate to contracts of insurance, and any officer or ^{to books,}person in charge, possession, custody or control of such ^{etc., of an}books, securities or documents who refuses or neglects to ^{insurer.}afford such access shall be guilty of an offence. 1924, c. 50, s. 15.

15.—(1) It shall be the duty of the officers and agents of ^{Duty to}a licensed insurer, and of persons licensed hereunder, or of ^{furnish in-}any insured to furnish the Superintendent on his request ^{formation}with full information relative to any contract of insurance ^{on request.}issued by the insurer or to the insured which comes within the terms of sections 80 and 121 or relative to any settlement or adjustment under any such contract. 1924, c. 50, s. 16 (1); 1925, c. 54, s. 3.

(2) The Minister may, at his discretion, instruct the ^{Inspection.}Superintendent to visit the head office or chief agency from which the contract was issued, or the office of the adjuster, and inquire into such contract or settlement, and the provisions of section 14 shall apply *mutatis mutandis* to such inquiry. 1924, c. 50, s. 16 (2).

16.—(1) The Superintendent shall visit personally, or ^{Annual}cause a duly qualified member of his staff to visit at least ^{inspection}annually the head office or chief office in Ontario of every ^{of insurers.}licensed insurer other than an insurer incorporated and licensed by the Dominion of Canada and he shall verify the statements of the condition and affairs of each such insurer filed under this Act, and make such inquiries as are necessary to ascertain its condition and ability to provide for the payment of its contracts as they mature and whether or not it has complied with all the provisions of this Act applicable to its transactions and the Superintendent shall report thereon to the Minister as to all matters requiring his attention and decision.

Examina-
tion of
affairs of
insurer.

(2) Where the head office of any such insurer is not in Ontario and the Superintendent deems it necessary and expedient to make a further examination into the affairs of the insurer and so reports to the Minister, the Minister may, in his discretion, instruct the Superintendent to visit the head office of such insurer to inspect and examine its affairs and to make such further inquiries as the Minister may require.

Duty of
officers and
agents to
facilitate
examina-
tion.

(3) The officers or agents of such insurer shall cause the books and records of the insurer to be opened for the inspection of the Superintendent and shall otherwise facilitate such examination so far as it is in their power.

Production
of books at
head office
or as Super-
intendent
may direct.

(4) In order to facilitate the inspection of the books and records of an insurer the insurer may be required by the Superintendent with the approval of the Minister, to produce the said books and records at the head or chief office of the insurer in Ontario or at such other convenient place as the Superintendent may direct; the officer or officers of the insurer who have custody of the books and records shall be entitled to be paid by the insurer for the actual expenses of such attendance.

Examination
of affairs
of an insurer.

(5) The Superintendent with the approval of the Minister may cause abstracts to be prepared of the books and vouchers and a valuation to be made of the assets or liabilities of any such insurer and the cost thereof upon the certificate of the Superintendent approved by the Minister shall be paid by the insurer.

Expense of
examination.

(6) Where the office of an insurer at which an examination is made pursuant to this section is out of Ontario, the insurer shall pay the account of the Department in connection with such examination upon the certificate of the Superintendent approved by the Minister. 1924, c. 50, s. 17.

Service of
notice or
process on
Superin-
tendent.

17.—(1) Where the head office of a licensed insurer is situate outside of Ontario, notice or process in any action or proceeding in Ontario may be served upon the Superintendent and such service shall be deemed service upon the insurer in the case of a corporation and upon members of the insurer in the case of an unincorporated body or association.

Insurer
to file
address.

(2) Every licensed insurer shall file in the office of the Superintendent notice of a post office address to which any such notice or process may be forwarded by the Superintendent and shall from time to time notify the Superintendent of any change in the address so filed.

Superin-
tendent to
forward
notice or
process
forthwith.

(3) The Superintendent shall forthwith after the receipt of any such notice or process forward the same to the insurer by registered mail, postage prepaid, addressed in the manner last notified to him for this purpose by the insurer. 1924, c. 50, s. 18.

18.—(1) The Superintendent shall prepare for the Minister from the statements filed by the insurers and from any inspection or inquiries made, an annual report, showing particulars of the business of each insurer as ascertained from such statement, inspection and inquiries, and such report shall be printed and published forthwith after completion.

Annual
Report.

(2) In his annual report the Superintendent shall allow as assets only such of the investments of the several insurers as are authorized by *The Companies Act*, or by their Acts or instruments of incorporation, or by the general Acts applicable to such investments.

Permissible
investments
only to be
allowed as
assets.

Rev. Stat.
c. 218.

(3) In his said report the Superintendent shall make all necessary corrections in the annual statements made by all licensed insurers as herein provided, and shall be at liberty to increase or diminish the liabilities of such insurers to the true and correct amounts thereof as ascertained by him in the examination of their affairs at the head office thereof in Ontario, or otherwise.

Superin-
tendent's
corrections
of annual
statements.

(4) If it appears to the Superintendent, or if he has any reason to suppose, from the annual statements prepared and delivered to him by all insurers, that the value placed by any insurer, incorporated and licensed in Ontario, upon the real estate owned by it or any parcel thereof is too great, he may either require such insurer to secure an appraisement of such real estate by one or more competent valutors, or may himself procure such appraisement at the expense of the insurer, and the appraised value, if it varies materially from the statement or return made by the insurer, may be substituted in the said annual report of the Superintendent.

Appraise-
ment of real
estate owned
by insurer.

(5) In like manner, if it appears to the Superintendent, or if he has any reason to suppose, that the amount secured by mortgage or hypothec upon any parcel of real estate, together with the interest due and accrued thereon, is greater than the value of such parcel, or that such parcel is not sufficient for such loan and interest, he may procure an appraisement thereof, and if from the appraised value it appears that such parcel of real estate is not adequate security for the loan and interest, he may write off such loan and interest a sum sufficient to reduce the same to such an amount as may fairly be realizable from such security, in no case to exceed such appraised value, and may insert such reduced amount in his said annual report.

Appraise-
ment of real
estate held
as security
for loans.

(6) In like manner, if it appears to the Superintendent, or if he has any reason to suppose, that the value of any other investments of the funds of the insurer is less than the amount of the value of the investments shown in the books of the insurer he may make or cause to be made an appraisal of such security, and if from the appraised value it appears that the value of the securities as shown on the

Appraise-
ment of
other
investments.

books of the insurer is greater than its true value as shown by the appraisal he may reduce the book value of the same to such amount as may fairly be realizable therefrom, and in no case to exceed such appraised value, and may insert such reduced amount in his said annual report. 1924, c. 50, s. 19.

Superintendent to report on petition for authorization of court bonds.

19. Upon request by the Minister, the Superintendent shall prepare for the consideration of the Lieutenant-Governor in Council, a report upon the petition of any insurer, praying to have its bonds authorized by order-in-council for acceptance in lieu of personal or private suretyship pursuant to any Act of Ontario wherein or whereby the Lieutenant-Governor in Council is empowered to authorize the giving or acceptance of securities or of the personal bonds of sureties, and in such report the Superintendent shall set out all material facts relating to the age, paid-up capital, surplus of assets over liabilities, underwriting experience and generally such other information relating to the financial condition and standing of the insurer as, in his opinion, should govern the granting or refusal of the petition. 1925, c. 54, s. 4.

PART II.

GENERAL PROVISIONS APPLICABLE TO INSURERS IN ONTARIO.

Application of Part.

20.—(1) This part shall apply to insurance undertaken in Ontario and to all insurers carrying on business in Ontario.

Undertaking insurance.

(2) Any insurer undertaking a contract of insurance which, under the provisions of this Act, is deemed to be made in Ontario, whether the contract is original or renewed except the renewal from time to time of life insurance policies, shall be deemed to be undertaking insurance in Ontario within the meaning of this Part. 1924, c. 50, s. 20 (1, 2).

Carrying on business.

(3) Any insurer undertaking insurance in Ontario, or which within Ontario sets up or causes to be set up any sign containing the name of an insurer, or which, within Ontario distributes or publishes or causes to be distributed or published any proposal, circular, card, advertisement, printed form or like document, or which within Ontario makes or causes to be made any written or oral solicitation for insurance, or which within Ontario issues or delivers any policy of insurance, or interim receipt or collects or receives or negotiates for or causes to be collected or received or negotiated for any premium for a contract of insurance or inspects any risk or adjusts any loss under a contract of insurance, or which prosecutes or maintains in Ontario any action or proceeding in respect of a contract of insurance or any club, society or

association incorporated or unincorporated which receives, either as trustees or otherwise, any contributions or moneys from its members out of which gratuities or benefits are paid directly or indirectly upon the death of its members or any of them, shall be deemed to be an insurer carrying on business in Ontario within the meaning of this Act. 1924, c. 50, s. 20 (3), *part*; 1925, c. 54, s. 5.

Licenses.

21.—(1) Every insurer undertaking insurance in Ontario or carrying on business in Ontario shall obtain from the Minister and hold a license under the provisions of this Act. Necessity of license.

(2) Every insurer undertaking insurance or carrying on business in Ontario without having obtained a license as required by this section, shall be guilty of an offence. Prohibition of unlicensed insurance.

(3) Any person who within Ontario does or causes to be done any act or thing mentioned in subsection 3 of the next preceding section on behalf of or as agent of an insurer not licensed under this Act or who receives directly or indirectly any remuneration for so doing shall be guilty of an offence. 1924, c. 50, s. 21 (1-3). Prohibition against person acting on behalf of unlicensed insurer.

(4) The following shall not be deemed insurers within the meaning of this Act or required or entitled to be licensed as such,— Exception.

- (a) pension fund societies or employees mutual benefit societies incorporated under the provisions of *The Companies Act*. Rev. Stat. c. 218.
- (b) corporations mentioned in clauses *c* and *d* of section 208 of this Act. 1925, c. 54, s. 6;
- (c) a trade union in Ontario which, under the authority of its incorporating Act or charter, has an assurance or benefit fund for the benefit of its own members exclusively. 1926, c. 49, s. 3.

22. Nothing in this Act shall prevent a licensed insurer which has lawfully effected a contract of insurance in Ontario from reinsuring the risk or any portion thereof with any insurer transacting business out of Ontario and not licensed under this Act. 1924, c. 50, s. 22. Reinsurance with unlicensed insurer.

23.—(1) Upon due application and upon proof of compliance with this Act the Minister may issue a license to undertake contracts of insurance and carry on business in Ontario to any insurer coming within one of the following classes: What insurers may be licensed.

- (a) Joint stock insurance companies;

- (b) Mutual insurance corporations;
- (c) Cash-mutual insurance corporations;
- (d) Fraternal societies;
- (e) Mutual benefit societies;
- (f) Companies duly incorporated to undertake insurance contracts and not within any of the classes mentioned in clauses *a, b, c, d, and e*;
- (g) Reciprocal or inter-insurance exchanges;
- (h) Underwriters or syndicates of underwriters operating on the plan known as Lloyds;
- (i) Pension fund associations. 1924, c. 50, s. 23 (1); 1927, c. 59, s. 3.

Effect of
license.

(2) A license issued pursuant to this Act shall authorize the insurer named therein to exercise within Ontario all rights and powers reasonably incidental to the carrying on of the business of insurance named therein which are not inconsistent with the provisions of this Act or with the terms of its Act or instrument of incorporation or organization. 1924, c. 50, s. 23 (2).

Classes of
insurance.

24.—(1) Subject to provisions of Parts of this Act particularly relating to classes of insurers mentioned in the preceding section, a license may be granted to an insurer to carry on any one or more of the following classes of insurance: Life insurance, accident insurance, sickness insurance, sick and funeral benefits, fire insurance, inland marine insurance, ocean marine insurance, inland transportation insurance, automobile insurance, guarantee insurance, liability insurance, hail insurance, weather insurance, live stock insurance, steam boiler insurance, plate glass insurance, explosion insurance, burglary insurance, bond insurance, property insurance, credit insurance, and forgery insurance. 1924, c. 50, s. 24 (1); 1926, c. 49, s. 4.

Licensing of
new classes.

(2) Licenses may be issued to insurers to carry on any class of insurance not mentioned in the preceding subsection under and subject to such regulations as the Lieutenant-Governor in Council may prescribe.

Limited or
conditional
license.

(3) A license may be issued subject to such limitations and conditions as the Minister may prescribe. 1924, c. 50, s. 24 (2, 3).

Restrictions
on granting
licenses.

25.—(1) A license shall not be granted:

Joint stock
companies.

- (a) To a joint stock insurance company undertaking life insurance, unless the company shall furnish to the Superintendent satisfactory evidence that of the capital stock not less than \$200,000 has been *bona fide* subscribed for and allotted, and at least

\$100,000 of the said subscribed stock has been paid up in cash;

(b) To a joint stock insurance company undertaking any one or more classes of insurance other than life, except upon proof:

(i) Where such company is undertaking insurance in Ontario only, that of the capital stock not less than \$50,000 has been *bona fide* subscribed and allotted, and at least \$25,000 of the said subscribed stock has been paid up in cash; and

(ii) where such company is undertaking insurance in Ontario and elsewhere, that of the capital stock not less than \$100,000 has been *bona fide* subscribed and allotted, and at least \$50,000 of said subscribed stock has been paid up in cash.

(2) A license shall not be granted to a mutual insurance corporation, a cash-mutual insurance corporation, an insurance company mentioned in clause f of section 23, a reciprocal or inter-insurance exchange, or to an underwriter or syndicate of underwriters operating on the plan known as Lloyds, except upon proof that the net surplus of assets over all liabilities exceeds the amount fixed by the preceding subsection for the paid-up capital stock of joint stock insurance companies, and that such net surplus of assets over all liabilities together with the contingent liability of members, if any, exceeds the amount fixed by the preceding subsection for the subscribed and allotted capital stock of joint stock insurance companies for the respective classes of insurance mentioned therein. Other insurers.

(3) Subsection 2 shall not apply to a purely mutual insurance corporation incorporated under the law of Ontario and insuring only risks other than mercantile and manufacturing on the premium note plan. Application of sub-section 2.

(4) A license shall not be granted to any insurer except upon proof that such insurer has complied with the provisions of the respective Parts of this Act and regulations applicable thereto. Application of other Parts.

(5) Except in the case of an insurer licensed by the Dominion of Canada a license shall not be granted to an insurer for the transaction of both fire and life insurance. 1924, c. 50, s. 25 (1-5). No license for both fire and life insurance.

(6) Except in the case of an insurer incorporated and licensed by the Dominion of Canada, where the head office of an applicant for a license under this Act is situate outside of Ontario, a license shall not be granted except upon proof of Evidence by insurer whose head office is outside of Province.

the applicant's ability to provide for the payment at maturity of all its contracts. 1924, c. 50, s. 25 (7).

Information preliminary to license.

26. The Superintendent may require such notice of the application for a license to be given by publication in the *Ontario Gazette* and elsewhere as he deems necessary. 1924, c. 50, s. 26.

Documents to be filed by applicants for license.

27.—(1) Before the issue of a license to an insurer such insurer shall file in the office of the Superintendent the following documents:

- (a) A certified copy of the Act or other instrument of incorporation or association of the insurer and of its constitution and by-laws and regulations verified in a manner satisfactory to the Superintendent;
- (b) A certified copy of the last balance sheet of the insurer and auditor's report thereon;
- (c) If the head office of the insurer is outside of Ontario notice of the place where the chief office of the insurer in Ontario is to be situate;
- (d) Copies of all policy forms and forms of application for insurance proposed to be used by the insurer in Ontario;
- (e) Any other evidence or documents required by other Parts of this Act.

Evidence.

(2) The applicant for a license shall furnish such other evidence as the Superintendent may deem necessary that the requirements of this Act have been complied with and that the applicant is entitled to the license applied for. 1924, c. 50, s. 27.

Statement of expenses of organization.

28.—(1) Upon application being made for a license under this Act by an insurer incorporated after the commencement of this Act under any general or special Act of Ontario, there shall be submitted to the Superintendent a sworn statement setting forth the several sums of money paid in connection with the incorporation and organization of the insurer, and such statement shall, in addition, include a list of all unpaid liabilities, if any, in connection with or arising out of such incorporation and organization.

To what limited.

(2) Until the license is granted, no payments on account of expenses of incorporation and organization, shall be made out of the moneys paid in by shareholders except reasonable sums for the payment of clerical assistance, legal services, office rental, advertising, stationery, postage and expense of travel, if any.

(3) The Minister shall not issue the license until he is satisfied that all the requirements of this Act and of *The Companies Act*, as to the subscriptions to the capital stock, the payment of money by shareholders on account of their subscriptions, the election of directors and other preliminaries have been complied with, and unless he is satisfied that the expenses of incorporation and organization, including the commission payable for the sale of the stock of the insurer are reasonable. 1924, c. 50, s. 28.

Conditions precedent to issue of license.

Rev. Stat. c. 218.

29. An insurer which has applied for a license and has complied with the requirements of this Act and of *The Companies Act* shall be entitled to the license. 1924, c. 50, s. 29.

Right to license.

Rev. Stat. c. 218.

30.—(1) Subject to the provisions of section 245 the license shall be in such form or forms for the different classes of insurers, as may be from time to time determined by the Minister, and shall specify the business to be carried on by the insurer.

Form of license.

(2) The license shall expire on the 30th day of June in each year, but may be renewed from year to year, provided that such license may be from time to time renewed for any term less than a year. 1924, c. 50, s. 30.

Term of license.

31. An insurer shall give notice in writing to the Superintendent of every disputed claim arising from loss insured under a contract made in Ontario within sixty days after proof of the loss or of the happening of the event upon which the insurance money is to become payable. 1924, c. 50, s. 31.

Notice of disputed claims to Superintendent.

32.—(1) Where written notice has been served on the Superintendent and upon proof of an undisputed claim arising from loss insured against in Ontario remaining unpaid for the space of sixty days after being due or of a disputed claim after final judgment in the regular course of law and tender of a legal, valid discharge being unpaid the license of the insurer shall *ipso facto* be null and void and shall be deemed to be cancelled.

Withdrawal of license for non-payment of undisputed claim judgment.

(2) Such license may be revived and the insurer may again transact business if, within six months after notice to the Superintendent of the failure of the insurer to pay any undisputed claim or the amount of any final judgment as provided in this section, such undisputed claim or final judgment upon or against the insurer in Ontario is paid and satisfied. 1924, c. 50, s. 32.

Revival of license.

33. When the insurer fails to keep unimpaired the deposit, if any, hereinafter required, the Minister may suspend or cancel the license of the insurer. 1924, c. 50, s. 33.

Failure to keep deposit unimpaired.

Insufficiency of assets to be reported by Superintendent.

34.—(1) If the Superintendent, upon examination, or from annual statements, or upon other evidence, finds that the assets of any insurer are insufficient to justify the continuance of the insurer in business or to provide proper security to persons effecting insurance with the insurer in Ontario or that the insurer has failed to comply with any provision of law, or with the Act or instruments of incorporation or association of the insurer, he shall so report to the Minister.

When assets deemed insufficient.

(2) If it appears in the case of an insurer undertaking contracts of life insurance, that its policy reserves, and, in the case of any other insurer, that its unearned premiums, in both cases, respecting outstanding contracts within the meaning of sections 80 and 121, together with any other liabilities in Ontario, exceed its assets in Ontario, including the deposit in the hands of the Minister, the assets of the insurer shall be deemed insufficient to justify the continuance of the insurer in business within the meaning of the preceding subsection, and the Superintendent shall so report to the Minister.

Suspension or cancellation.

(3) If the Minister, after consideration of the report and after a reasonable time has been given to the insurer to be heard by him, and upon such further inquiry and investigation as he thinks proper to make, reports to the Lieutenant-Governor in Council that he concurs in the report of the Superintendent, the Lieutenant-Governor in Council may suspend or cancel the license of the insurer and prohibit the insurer from doing any further business or soliciting or undertaking in Ontario any insurance; and thereafter it shall be unlawful for the insurer to undertake insurance in Ontario or carry on business in Ontario until the suspension or prohibition is removed by the Lieutenant-Governor in Council.

Notice.

(4) Notice of such suspension or cancellation of the license shall be published in the *Ontario Gazette* and thereafter any person transacting business on behalf of the insurer except for winding-up purposes shall be guilty of an offence.

Limited or conditional license.

(5) Where the Superintendent has reported as provided in subsection 1, the Minister or the Lieutenant-Governor in Council may direct the issue of such modified, limited or conditional license as may be deemed necessary for the protection of persons in Ontario who have effected or effect contracts of insurance with the insurer.

Application to Dominion licensees.

(6) The provisions of this section shall not apply to an insurer incorporated and licensed by the Dominion of Canada, but suspension or cancellation of the license by the Dominion of Canada shall *ipso facto* act as a suspension or cancellation of license under this Act. 1924, c. 50, s. 34.

Revival of license.

35. Where the license of an insurer is suspended or cancelled under the provisions of this Act, it may be revived if the insurer makes good the deposit, or the deficiency, as the

case may be, to the satisfaction of the Minister. 1924, c. 50, s. 35.

36. It shall be duty of the Superintendent to report to the Minister any violation of any of the provisions of this Act by any insurer licensed thereunder and thereupon the Minister may, in his discretion, suspend or cancel or refuse to renew the insurer's license. 1926, c. 49, s. 6.

Report on violation of Act.

Deposits.

37.—(1) Subject to the provisions of subsections 2 and 3 hereof, in sections 38 to 68 "insurer" shall be deemed to mean and include only joint stock insurance companies, cash-mutual insurance corporations, insurance companies mentioned in clause *f* of section 23 hereof, insurers which undertake life insurance except fraternal societies, and underwriters or syndicates of underwriters operating on the plan known as Lloyds. 1924, c. 50, s. 36 (1).

Meaning of "insurer" in sections 38 to 68.

(2) The provisions of sections 38 to 68 shall not apply to an insurer carrying on the business of insurance under license of the Dominion of Canada. 1925, c. 54, s. 7; 1926, c. 49, s. 7.

Application to Dominion licenses.

(3) The provisions of sections 38 to 68 shall not apply to an underwriter or syndicate of underwriters which is a member of the Society known as Lloyds, incorporated by the Imperial Statute, *Lloyds Act, 1871*.

Application to Lloyds.

(4) The expression "approved securities" in sections 38 to 68 shall mean and include only securities of or guaranteed by the Dominion of Canada or by any province of Canada; securities of any incorporated municipality of Canada; and such other securities as are authorized for the investment of trust funds under the law of the province in which they are offered for deposit and approved by the Superintendents of Insurance of the provinces of Canada in which the insurer is carrying on business. 1924, c. 50, s. 36 (3, 4).

Meaning of "approved securities."

38.—(1) Every insurer carrying on the business of insurance in Ontario shall, before receiving a license under this Act, deposit approved securities with the Minister in the following amounts:

Amount of deposit.

(a) Where the insurer undertakes life insurance—\$50,000;

(b) Where the insurer undertakes any one or more classes of insurance other than life;

(i) In Ontario only—\$25,000;

(ii) In Ontario and elsewhere—\$50,000.

Excess
deposit.

(2) The maximum deposit required from an insurer shall be \$50,000, but an insurer may voluntarily make a deposit in excess of the amount prescribed by this section, but no part of a voluntary deposit shall be withdrawn without the sanction of the Minister. 1924, c. 50, s. 37.

Value at
which
securities
received.

39.—(1) The value of such securities shall be estimated at their market value, not exceeding par, at the time when they are deposited.

Other
securities.

(2) If any other than approved securities are offered as a deposit, the Minister may accept the same on such valuation and on such conditions as he may deem proper.

Further de-
posit if
below
market
value.

(3) If the market value of any securities which have been deposited by an insurer declines below that at which they were deposited, the Minister may notify the insurer to make such further deposit as will ensure the accepted value of all the securities deposited by the insurer being equal to the amount which is required by this Act to be deposited.

Failure to
make
further
deposit.

(4) On failure by the insurer to make such further deposit within sixty days after being called upon so to do, the Minister may suspend or cancel the license.

Title to
securities.

(5) The property in any stock, bonds or debentures already deposited with the Minister under the provisions of *The Ontario Insurance Act, 1924*, or hereafter deposited under the provisions of this Act, shall be vested in the Minister by virtue of his office without any formal transfer while such stock, bonds or debentures form the whole or any part of the deposit required by this Act.

Interest
upon
deposits.

(6) So long as the conditions of this Act are satisfied and no notice of any final judgment against the insurer or order for its winding-up, or for the distribution of its assets or for administration of its deposit is given to the Minister, the insurer shall be entitled to receive the interest upon the securities forming the deposit. 1924, c. 50, s. 38.

Substitution
of securities.

40. Where an insurer desires to substitute other approved securities for securities deposited the Minister may permit the substitution to be made. 1924, c. 50, s. 39.

Withdrawal
of deposit
in certain
cases.

41.—(1) Where it is made to appear that any such insurer, having made a deposit with the Minister, is carrying on the business of insurance under license of the Dominion of Canada, the insurer shall be entitled to withdraw the deposit with the Minister. 1924, c. 50, s. 40 (1); 1926, c. 49, s. 8.

Withdrawal
of excess
deposit.

(2) If at any time it appears that an insurer has on deposit with the Minister under this Act a sum in excess of the prescribed amount, the Minister, upon being satisfied that the interest of persons effecting contracts of insurance with the

insurer in Ontario will not be prejudiced thereby, and upon giving such notice in the *Ontario Gazette* and taking such other precautions as he deems expedient, may authorize the withdrawal of the amount of such excess or such portion thereof as he deems advisable; but the Minister may authorize such withdrawal without giving notice. 1924, c. 50, s. 40 (2).

42.—(1) An insurer which has ceased to transact business in Ontario and desires to obtain a return of its deposit may give written notice to that effect to the Superintendent, and shall publish in the *Ontario Gazette* a notice that it has applied to the Lieutenant-Governor in Council for the return of its deposit, calling upon all claimants, contingent or actual, who object to the return to file their objections with the Superintendent on or before a day named in the notice, which shall not be less than three months after the first publication of it. Return of deposit on ceasing to do business.

(2) Upon giving the notice to the Superintendent the insurer shall file with him a list of all its outstanding contracts of insurance, including contracts in respect of which claims have accrued. Filing list of outstanding contracts.

(3) After the day named in the notice, if the Minister is satisfied that the insurer has obtained a discharge of all such outstanding contracts, the Lieutenant-Governor in Council may direct that the deposit be returned. Return of deposit on proof of discharge of contracts.

(4) If the Minister is not satisfied that all such contracts have been discharged the Lieutenant-Governor in Council may direct that a sufficient amount be retained to meet the contracts unprovided for and that the remainder of the deposit be returned, and thereafter from time to time as such contracts lapse or proof is adduced that they have been satisfied further return of the deposit may be directed by the Lieutenant-Governor in Council. 1924, c. 50, s. 41. Return of part of deposit.

Reciprocal Deposits.

43.—(1) In sections 44 and 45 the expression "contracts" shall in relation to any other province of the Dominion have the meaning assigned to it by the Act of that province under which insurers are licensed to carry on the business of insurance. Meaning of "contracts" under and application of ss. 44 to 45.

(2) This section and sections 44 and 45 shall be applicable notwithstanding that the insurer is or may become licensed in one province for classes of insurance different from those for which it is or may become licensed in another province. 1926, c. 49, s. 9, *part*.

44.—(1) Where an insurer has its head office for the Dominion in this province and makes a deposit under this Act for the purposes of this section, by virtue whereof the Sole deposit of insurer in this province.

insurer will not be required to make a deposit in another province in which it is or may become licensed to undertake insurance, the following provisions shall have effect, and to the extent that they are inconsistent with any other provision of this Act shall prevail over that provision, namely:

- (a) The amount of the deposit to be made and maintained by the insurer shall be fixed by the Lieutenant-Governor in Council, and shall be not less than fifty thousand dollars;
- (b) The deposit shall be held and administered as security *pari passu* for its contracts in this province and its contracts in any other province where it is or may become licensed to undertake insurance, and as security also for all fees, taxes, and costs payable by it to this and any other province;
- (c) The Minister shall, upon the request of the official who issues or proposes to issue a license to the insurer in another province, certify under his hand that the deposit is held in manner provided by clause (b), and the Superintendent shall forward the certificate to that official and a copy to the Superintendent of Insurance in each province;
- (d) Where, with respect to the outstanding contracts of the insurer, it appears to the Superintendent from the annual statement under section 70 or any examination of the affairs of the insurer that a further deposit for the purposes of this section is necessary, or where it appears to the Superintendent of Insurance for another province in which the insurer is licensed from any annual report made to him by the insurer or any examination of the affairs of the insurer that a further deposit for the purposes of this section is necessary, and such Superintendent requests the Superintendent to obtain a further deposit, the insurer shall forthwith deposit such further sum as the Lieutenant-Governor in Council may fix;
- (e) If the insurer obtains a Dominion license extending to this or another province the Minister may, on the request of the insurer, authorize the Superintendent to deliver to the insurer or to transfer to the Minister of Finance for the Dominion the whole or part of such deposit as the Minister thinks fit, having regard to the extent of the Dominion license;
- (f) Where the license of the insurer is suspended or cancelled under this Act, the Superintendent shall give immediate notice to the Superintendent of Insurance in each province;

(g) Where the insurer ceases to carry on insurance business in the Dominion and its deposit may be withdrawn under this Act, or where its deposit becomes liable to administration under this Act, the Superintendent shall notify the Superintendent of Insurance in each province, and all claims and liabilities arising in any such province shall be verified by the Superintendent of Insurance there and a statement thereof communicated to the Superintendent;

(h) Where the insurer withdraws from, or its license is suspended or cancelled in, or its deposit becomes liable to administration under the law of another province, and notice thereof is given to the Superintendent, the Minister and the Superintendent shall, upon request of the Superintendent of Insurance in that province, take such steps as would be taken if the insurer were withdrawing from, or its license were suspended or cancelled in, or its deposit had become liable to administration in this province, and all claims and liabilities arising in that province shall be verified by the Superintendent of Insurance there and a statement thereof communicated to the Superintendent.

(2) The insurer shall not change the situation of its head office to another province without the consent of the Minister, but where the Minister so consents he may authorize the Superintendent to transfer the insurer's deposit to the Minister responsible for the deposit in that province, or to the insurer, as the Minister in that province requests. 1926, c. 49, s. 9, *part*.

45.—(1) Where the insurer has its head office for the Dominion in another province and there makes a deposit of such amount as shall be fixed by the proper authority in that province, and which shall not be less than fifty thousand dollars, and which deposit is under the laws of that province held as security *pari passu* for its contracts in that province and its contracts in this and any other province where it is or may become licensed to undertake insurance, and as security also for all fees, taxes, and costs payable by it to each province, the Minister, upon receipt of a certificate from the Minister of that province responsible for the deposit that the deposit is and will be so held as aforesaid, and of the consent of the insurer to its being so held, shall exempt the insurer from the provisions of this Act requiring it to make and maintain a deposit.

(2) Where the deposit of the insurer becomes liable to administration for the purpose of satisfying its claims and liabilities arising in this province, the Superintendent shall, by notice in the *Ontario Gazette* or otherwise at the cost of the

insurer, ascertain and advertise for particulars of all outstanding contracts of and claims against the insurer, verified in such manner as may seem advisable to him and shall upon receipt of the same properly verified communicate a statement thereof to the Superintendent of Insurance for the province holding the deposit, with particulars of any other liabilities for which the deposit is held as security.

(3) Where a licensed insurer is exempted under this section, the Minister shall transfer its deposit under this Act to the Minister responsible for the deposit in the province in which the insurer has its head office and which will hold the deposit, or to the insurer, as that Minister requests.

(4) Every provision of this section shall prevail over any provision of this Act to the extent that it is inconsistent with such other provision. 1926, c. 49, s. 9, *part*.

Power to
apply ss. 43
to 45 to
other
provinces.

46.—(1) The Lieutenant-Governor in Council may, on being satisfied that any other province has enacted provisions identical with or substantially the same as sections 43 to 45, direct by Order-in-Council that those sections shall apply to that province, and may from time to time, by Order, revoke or alter any such Order-in-Council.

(2) Every Order-in-Council under this section shall be published in the *Ontario Gazette*, and a copy shall be sent to the Superintendent of Insurance in each province. 1926, c. 49, s. 9, *part*.

Transfer of
deposit on
purchase or
reinsurance.

47.—(1) Where a licensed insurer, hereinafter called the continuing insurer, has, by purchase or otherwise, acquired the assets and assumed the liabilities, within Ontario, of another licensed insurer, hereinafter called the discontinuing insurer, or reinsured all the contracts of a discontinuing insurer outstanding within Ontario, the Lieutenant-Governor in Council may, upon the application of the continuing insurer, and upon the report of the Superintendent, direct the transfer of the deposit held by the Minister under the provisions of this Act in the name of the discontinuing insurer to the continuing insurer.

Transferred
deposit—
how dealt
with.

(2) In any such case the deposit so transferred shall thereafter be treated and dealt with under the provisions of this Act in the same manner as though it had been originally deposited by the continuing insurer. 1924, c. 50, s. 42.

Administration of Deposit.

Deposit
subject to
adminis-
tration.

48. The deposit made by any insurer under this Act shall be subject to administration in the manner hereinafter provided. 1924, c. 50, s. 43.

Deposit
security for
certain con-
tracts only.

49. Creditors of the insurer in respect of claims under contracts of insurance which have for their subject property in Ontario or property in transit to or from Ontario, or the

life, safety, fidelity or insurable interest of some persons resident, or whose head office is situate in Ontario, or where the contract itself makes the payment thereunder primarily payable to some resident of Ontario, or to some incorporated company the head office of which is situate in Ontario, shall be entitled to share in the proceeds of the deposit. 1924, c. 50, s. 44 (1).

50. Application for administration may be made to the Superintendent by any person entitled to share in the proceeds of the deposit. 1924, c. 50, s. 45 (1). Who may make application.

51.—(1) An order for administration of the deposit of any insurer may be made by the Superintendent, with the approval of the Minister at any time when, in his opinion, it is necessary or desirable for the protection of creditors entitled to share in the proceeds of the deposit. When order for administration may be made.

(2) Any applicant for administration shall be entitled to an order for administration upon proof: Evidence.

(a) that the license of the insurer has been cancelled, and that its assets are insufficient to discharge its outstanding contracts, or;

(b) that an order has been made for the winding-up of the insurer, or;

(c) that the insurer has failed to pay any undisputed claim arising under any contract of insurance in respect to which the deposit is subject to administration for the space of sixty days after it is due, or has failed to pay a disputed claim after final judgment and tender of a legal, valid discharge. 1924, c. 50, s. 46 (1, 2).

(3) No order for administration shall be made unless and until at least two clear days' notice of the intention of the Superintendent to make such an order or of the application for such an order has been served upon the insurer, or where the insurer is in liquidation, upon the liquidator of the insurer. 1924, c. 50, s. 46 (3); 1926, c. 49, s. 12. Notice.

52. The administration proceedings shall not affect any winding-up of the insurer and shall be carried on independently of such winding-up. 1924, c. 50, s. 47. Relation to winding-up of insurer.

53. The property in the securities deposited with the Minister under the provisions of this Act shall, upon the making of an order for the administration of the said deposit, vest in the Superintendent and may be held, sold or dealt with by him for the benefit of creditors entitled to share in the proceeds of the deposit in such manner and after such notice and formalities as he deems proper. 1924, c. 50, s. 48. Vesting and disposition of securities.

Superintendent to take charge of administration.

54.—(1) Where an order for administration is made, the Superintendent shall proceed to administer the deposit in the manner hereinafter provided.

Expenses of administration.

(2) For the purposes of the administration the Superintendent may engage such clerical and other assistance and make such other disbursements as he may deem necessary and proper, and expenses so incurred shall be forthwith payable by him out of the proceeds of the deposit. 1924, c. 50, s. 49.

Notice of order and date within which claims must be filed.

55. The Superintendent shall forthwith after an order of administration is made, fix a date within which all claimants against the deposit shall be required to file their claims, and to publish in the *Ontario Gazette* and in the official *Gazette* of each province in which the insurer carries on business, and in two newspapers published at or nearest to the place where the head office of the insurer is situate, and in such other manner as he may deem necessary and proper, notice that an order for the administration of the deposit of the insurer has been made and calling upon all claimants to file their claims on or before the date so fixed by him. 1924, c. 50, s. 50.

Insurer to furnish statement of outstanding contracts.

56.—(1) The Superintendent shall forthwith call upon the insurer, the agents of the insurer or upon the liquidator to furnish a statement of all its outstanding contracts and of the persons entitled to share in the proceeds of the deposit.

Access to books and records of insurer.

(2) The books, financial statements, policy records, schedules, accounts and vouchers of any insurer in respect of whose deposit an order for administration has been made, whether in the custody of the insurer, agents of the insurer or the liquidator, shall be accessible to the Superintendent or to any person authorized under his hand and seal; and any insurer or any officer thereof, or any agent or liquidator who refuses or neglects to afford such access shall be guilty of an offence. 1924, c. 50, s. 51.

Priorities: other than life insurance.

57.—(1) Except in the case of life insurance, claimants in respect of judgments obtained and claims accrued or matured at the date of the administration order shall be entitled to payment of their proved claims in full in priority to claimants in respect of unearned premiums and, subject thereto, claimants in respect of unearned premiums shall be entitled to claim such part of the premium paid as is proportionate to the period of their contracts respectively unexpired at the date of the administration order or at the date of the winding-up of the insurer if a winding-up order was previously made.

Life insurance.

(2) In the case of life insurance, claimants in respect of judgments obtained and claims accrued or matured, shall rank in the distribution of the proceeds of the deposit *pari passu* with claimants in respect of unmatured contracts, and

claimants in respect of unmatured contracts shall be entitled to claim for the full amount of the legal reserve in respect of their contracts determined according to the valuation thereof approved by the Superintendent in accordance with the provisions of this Act. 1924, c. 50, s. 52.

58. A person who holds security for his claim under a contract of insurance, or who is entitled to share in the administration of a fund deposited with the Government of any other province for the protection of persons resident in that province shall only be entitled to share in the administration of the Ontario fund if he abandons such special security and releases his claim upon any other Government fund. 1924, c. 50, s. 53.

Certain persons not entitled to share in proceeds of deposit.

59. The holder of a policy or contract of insurance which matures or upon which a claim accrues within thirty days after the making of the administration order, shall be entitled to claim as a creditor at any time before the date fixed by the Superintendent within which all claims must be filed or within thirty days thereafter, for the full amount of such claim; provided that no claim which accrued after the expiration of the thirty days hereinbefore mentioned shall rank upon the deposit, unless or until there is sufficient to pay all other creditors in full. 1924, c. 50, s. 54.

Claims accruing within thirty days of administration order.

60.—(1) The Superintendent shall give notice to claimants who have sent in their claims to him, or of whose claims he has notice, and whose claims he considers should not be allowed without proof, requiring such claimant to attend before him on a day named in such notice and prove their claims.

Notice to claimants where proof required.

(2) In case any claimant does not attend in pursuance of such notice, his claim shall be disallowed, unless the Superintendent sees fit to grant further time for the proof thereof.

Failure to attend: claim may be disallowed.

(3) If any claimant attends in pursuance of such notice the Superintendent may on hearing the matter, make an order allowing or disallowing his claim in whole or in part. 1924, c. 50, s. 55.

Order of Superintendent.

61.—(1) All claimants notified to attend before the Superintendent to prove their claims and all parties interested in such claims may be represented before the Superintendent by counsel and the Superintendent may make such order as seems proper to him in respect to the payment of the costs of the parties so attending as amongst themselves or out of the proceeds of the deposit.

Counsel: costs.

(2) A record of all correspondence, documents and evidence taken before the Superintendent relating to each disputed claim, together with a copy of the order of the Super-

Record.

intendent, shall be preserved in the office of the Superintendent. 1924, c. 50, s. 56.

Appeal.

62.—(1) Any claimant, or any person interested in any claim may, at any time within fifteen days of the making by the Superintendent of an order with respect to any disputed claim, serve upon the Superintendent and upon all persons parties to the proceedings before the Superintendent, notice of his intention to appeal from the order of the Superintendent.

Notice.

(2) Such notice shall be served at least ten clear days before any notice of appeal is filed with the Court.

Procedure on appeal.

(3) The practice and procedure upon appeal from an order of the Superintendent shall be the same, as nearly as may be, as upon an appeal from a judge in the trial of an action.

Record.

(4) The Superintendent upon receiving notice of the intention of any claimant or interested party to appeal, shall forthwith certify the record, which shall include the correspondence, the documents and evidence relating to the claim and transmit the same with a copy of his order to the Registrar of the Supreme Court. 1924, c. 50, s. 57.

Schedule of claimant.

63.—(1) The Superintendent shall prepare schedules of claimants showing those persons who appear by the books and records of the insurer to be entitled to share in the proceeds of the deposit and those persons who have filed claims pursuant to notice and whose claims have been approved by him, together with the name and address of each claimant, the particulars of the contract of insurance upon which the claim is based and the amount for which each claimant is entitled to rank upon the fund.

Filing of schedules: Notice.

(2) A copy of the completed schedules certified by the Superintendent shall be duly filed in his office at Toronto and notice of such filing shall forthwith be given by him in the manner provided in section 55 for the publication of the notice of the making of an order of administration.

Inspection: Notice of dispute.

(3) Thereupon the schedules shall be open to inspection and, at any time within fifteen days after publication of the notice of such filing, any claim ranked or omitted to be ranked in such schedules may be contested by any person interested by serving a notice of dispute upon the Superintendent.

Hearing of disputed claims: Procedure.

(4) The provisions of the next three preceding sections, relating to proof of claims before the Superintendent and appeal from the order of the Superintendent in that behalf, shall apply, *mutatis mutandis*, to claims of which a notice of dispute is served pursuant to the provisions of the preceding subsection.

(5) At the expiration of fifteen days after publication of the notice of filing of the schedules, the claims as allowed in the schedules shall be deemed to be final and binding, except in cases where notice of dispute has been filed or appeals from an order of the Superintendent are pending, and all claims of which notice has not been received, and which are not shown in the schedules, shall be forever barred. 1924, c. 50, s. 58.

When claims
barred.

64. At any time before the filing of the schedules as aforesaid, the Superintendent may arrange with any licensed insurer for the reinsurance by such insurer of the outstanding risks or any class thereof of the insurer and apply such part of the proceeds of the deposit as may be agreed upon as the consideration for such reinsurance and, in such case, the arrangement for reinsurance shall be in lieu of all claims for unearned premiums in respect of the contracts so reinsured. 1924, c. 50, s. 59.

Reinsurance
in lieu of
claims.

65. Where the Superintendent is of opinion that the proceeds of the deposit should be distributed while appeals from his orders are still pending, and while there are contingent claims still undetermined, he may before making such distribution, set aside a reserve estimated by him to be sufficient to cover all such disputed or contingent claims and the expenditure necessary to complete the administration. 1924, c. 50, s. 60.

Reserve for
disputed or
contingent
claims.

66.—(1) The Superintendent shall prepare a statement of his account verified by affidavit, including particulars of the disposition of the securities deposited by the insurer under the provisions of this Act, and of all moneys received and disbursed by him in connection with the administration, together with all accounts and vouchers relative thereto.

Statement of
accounts.

(2) The Superintendent shall submit his accounts to the Master of the Supreme Court of Ontario who shall appoint a day for the passing thereof and require such notice of the appointment for passing the accounts to be given as he may deem necessary and proper.

Passing of
accounts
before
Master.

(3) The Master may make an order allowing or disallowing any item of the accounts and, in any such order, shall allow the Superintendent such remuneration for the performance of his duties in administering the deposit as he may deem proper, and determine the rate of dividend payable to claimants according to their respective priorities. 1924, c. 50, s. 61.

Order of
Master as to
accounts and
rate of
dividend.

67.—(1) Forthwith after the passing of his accounts by the Master the Superintendent may proceed to distribute the proceeds of the deposit, less any reserve he may set aside pursuant to the provisions of section 65, *pro rata* among the

Distribution
of proceeds
of deposit.

claimants in accordance with the schedule and the rate of dividend determined by the Master.

Claimant may rank on general estate of insurer for unpaid balance of claims.

(2) Where the proceeds of the deposit are not sufficient to pay all claims in full, the acceptance of any dividend out of such proceeds shall not prejudice the right of any claimant to rank as a creditor upon the general estate of the insurer for the unpaid balance of such claim or bar any recourse policyholders may have, either at law or in equity, against the insurer.

Master to direct disposition of any balance.

(3) If any balance remains in the hands of the Superintendent after distribution of the dividend ordered by the Master, settlement of all disputed or contingent claims and payment of the expenses of the administration, the Master may, by order, direct the distribution of a further dividend, or if the amount is insufficient to justify the payment of a further dividend he may direct that such amount be paid over to the liquidator or the insurer. 1924, c. 50, s. 62.

Final passing of accounts and discharge of Superintendent.

68. Upon the completion of the distribution of the proceeds of the deposit the Superintendent shall submit his final accounts to the Master, and the Master may, on the passing thereof, make an order approving such accounts and formally discharging the Superintendent as administrator. 1924, c. 50, s. 63.

Records and Returns.

Record of premium income and losses.

69.—(1) Every licensed insurer which carries on in Ontario the business of fire insurance shall keep a record of its premium income derived from risks located in Ontario and of claims paid in respect of such risks so as to show at any time its experience according to the classification of occupancy hazards of the National Board of Fire Underwriters, with such modifications as the Superintendent may prescribe.

Audit and direction where records not duly kept.

(2) If, at any time, it appears to the Minister on the report of the Superintendent that such records are not kept in such a manner as to show correctly the experience of the insurer in Ontario as herein required the Minister may nominate a competent accountant to proceed under his direction to audit the books and records of the insurer and to give such instructions as will enable the officers of the insurer to keep the records correctly thereafter.

Expenses of audit.

(3) The expense of such an audit shall be borne by the insurer and shall not exceed fifteen dollars per day and necessary travelling expenses of the accountant nominated and the account shall, when certified and approved under the hand of the Superintendent, be paid by the insurer forthwith.

(4) Every licensed insurer undertaking the business of fire insurance in Ontario, shall prepare and file annually with the Superintendent on or before the 1st day of July in each year, on a printed form to be supplied by the Superintendent, a sworn statement of the premium income and losses experienced within Ontario for the calendar year next preceeding the date of the return according to the records required to be kept by this section.

(5) Any insurer and the principal officer within Ontario of any insurer which contravenes the provisions of this section shall be guilty of an offence. 1924, c. 50, s. 64.

70.—(1) Every licensed insurer shall prepare annually and deliver to the Superintendent on or before the last day of February of each year, a statement of the condition of affairs of the insurer as at the 31st day of December next preceeding, which statement shall be in such form as may be prescribed by the Superintendent and shall exhibit the assets, liabilities, receipts and expenditures of the insurer for the calendar year ended on the said date, and shall also exhibit particulars of the business done in Ontario during such year and such other information as is deemed necessary by the Minister or Superintendent from time to time, and such statement shall be verified in the manner prescribed by the Superintendent.

(2) In the case of an insurer carrying on business under license of the Dominion of Canada, the Superintendent may, in lieu of the annual statement required to be filed by all insurers under subsection 1, direct the preparation of a modified statement respecting the business of the insurer in Ontario only.

(3) In the case of a corporation such statement shall be verified by the president, vice-president or managing director, or other director appointed for the purpose by the board of directors, and by the secretary or manager of the corporation.

(4) Every insurer shall, when required by the Superintendent make prompt and explicit answer in reply to any inquiry directed to the insurer by him in relation to the said statement or in relation to the transactions of the insurer in Ontario.

(5) In the case of all classes of insurance other than life insurance, and in the case of all insurers other than purely mutual corporations insuring only risks other than mercantile and manufacturing on the premium note plan, the statement shall show as a liability of the insurer, eighty per centum of the actual portions of unearned premiums on all business in force on the 31st day of December then last past, or eighty per centum of fifty per centum of the premiums written in its policies and received in respect of contracts having one year or less to run and *pro rata* on those for longer periods.

**Life
insurers.**

(6) In the case of insurers transacting life insurance the statement shall show as a liability the valuation of outstanding contracts of insurance according to the standard for valuation of policies of life insurance prescribed by section 74 of this Act, or such higher standard as the insurer may, with the approval of the Superintendent, adopt. 1924, c. 50, s. 65 (1-6).

**Unpaid
balances.**

(7) The statements shall not show as assets the unpaid balances owing by agents or other insurers which are more than three months overdue, or bills receivable on account of the same, or unpaid premium on subscribed shares of capital stock or investment in office furnishings or equipment, nor shall such statements include as assets any investments not authorized by any special or general Act to which the insurer is subject. 1924, c. 50, s. 65 (7); 1925, c. 54, s. 8.

**Valuation of
securities.**

(8) Every licensed insurer may, in its annual statement or in any valuation of its securities required to be made, value all of its securities, having a fixed term and rate and not in default as to principal or interest, according to the following rule: If purchased at par at the par value; if purchased above or below par on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield meantime the effective rate of interest at which the purchase was made; provided the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase; and provided the Superintendent shall have full discretion in determining the method of calculating values according to the foregoing rule. 1924, c. 50, s. 65 (8).

**Advertised
statement.**

71. A statement purporting to show the financial condition of an insurer differing from the financial condition shown by the statement filed with the Superintendent shall not be published or circulated and every insurer publishing such a statement shall be guilty of an offence. 1924, c. 50, s. 66.

**Statements
that finan-
cial stand-
ing guaran-
teed by
Government
prohibited.**

72. Every person who represents orally or in writing that the issue of a license to an insurer or the printing or publication of an annual statement in the report of the Superintendent or in any other publication of the Department or any other circumstance of the supervision or regulation of the business of the insurer by law or the Department of Insurance is a warranty or guarantee of the financial standing of the insurer or of its ability to provide for the payment of its contracts at maturity, shall be guilty of an offence. 1924, c. 50, s. 67.

*Real Estate.***Power of
insurers
as to holding
land.**

73.—(1) Except in the case of a fraternal society a licensed insurer may acquire and hold absolutely for its own use and benefit such real property as is necessary for the transaction of its business or *bona fide* mortgaged to it by way of security, and such real property as is acquired by it by fore-

closure and in satisfaction of a debt, and may sell, mortgage, lease or otherwise dispose of the same, but such insurer shall sell any such last mentioned real property within seven years after it has been so acquired. 1924, c. 50, s. 68 (1); 1925, c. 54, s. 9 (1).

(2) Except in the case of a fraternal society a licensed insurer may acquire and hold real property in addition to that provided for by the preceding subsection and may acquire or hold or construct a building larger than is required for the transaction of its business and may lease any part of such building not so required, upon complying with and subject to the provisions of *The Mortmain and Charitable Uses Act*. 1924, c. 50, s. 68 (2). Additional real property. Rev. Stat., c. 132.

(3) In the case of a fraternal or mutual benefit society, any licensed society or any branch or lodge thereof may, subject to its constitutions or rules, acquire and hold absolutely for its own use and benefit such real estate as is necessary for the transaction of its business or *bona fide* mortgaged to it by way of security, and when so authorized by the Lieutenant-Governor in Council, may acquire and hold or construct a building larger than is required for the transaction of its business and may lease any part of such building not so required, and may hold such real estate as is acquired by it by foreclosure or in satisfaction of a debt, and may sell, mortgage, lease or otherwise dispose of the same; but the society, branch or lodge shall sell any such last mentioned real estate within seven years after it has been so acquired. 1924, c. 50, s. 68 (3); 1925, c. 54, s. 9 (2); 1926, c. 49, s. 13. Power of licensed fraternal societies as to holding land.

(4) Any such real property which has been held by the insurer for a longer period than seven years without being disposed of shall be forfeited to His Majesty for the uses of Ontario, provided that,— Forfeiture.

- (a) no such forfeiture shall take effect until the expiration of at least six calendar months after notice in writing to the insurer by the Minister of the intention of His Majesty to claim the forfeiture, and
- (b) the insurer may, notwithstanding such notice, before the forfeiture is effected, sell or dispose of the property free from liability to forfeiture. 1925, c. 54, s. 9 (3).

Life Insurance Reserves.

74.—(1) The valuation of contracts of life insurance issued by insurers incorporated and licensed under the law of Ontario except contracts of fraternal societies licensed under this Act, shall be based on the British Offices' Life Tables, 1893, O^M(⁵), and on a rate of interest of three and one-half per centum per annum. Standard of valuation.

Deduction
allowed in
first policy
year.

(2) In computing such valuation a deduction may be allowed from the value of a policy in the first policy year of an amount ascertained in the following manner, namely: In the case of a twenty payment life policy or any other form of policy, except a term policy, the net annual premium upon which is less than the corresponding net annual premium of a twenty payment life policy, the difference between the net annual premium for such policy and the corresponding net premium for a one year term insurance, and in the case of a policy with a net annual premium greater than that of a twenty payment life policy, an amount equal to the deduction allowed in respect of a twenty payment life policy.

Deduction
in subse-
quent years.

(3) After the first policy year the deduction allowed by the preceding subsection shall be diminished each year by an amount not less than one-ninth of the deduction in the first policy year so that in the tenth year from the date of issue the value of the policy shall not be less than that ascertained in accordance with subsection 1.

Deduction
where less
than ten
annual
premiums.

(4) In case of policies subject to less than ten annual premiums the deduction ascertained as provided in subsection 2 shall, in each year after the first policy year, be reduced by an amount not less than the equal parts thereof required to provide that the value of the policy at the end of the premium paying period shall be not less than that ascertained in accordance with subsection 1.

Additional
liability in
certain
cases.

(5) In the case of policies where the net premium is less than the net premium calculated upon the British Offices' Life Tables 1893, $OM^{(5)}$, with interest at three and one-half per centum per annum, an additional liability shall be charged against such policy to the extent of the value of an annuity consisting of the difference between such net premium and the premium stated in the policy.

Accident
and sickness
benefits.

(6) Where a contract of life insurance provides for accident or sickness insurance benefits the Superintendent may prescribe by regulations the basis for valuing such benefits, but no deduction shall be allowed from the basis so fixed under the provisions of subsection 2 hereof, and in the valuation of the life insurance benefits under such contracts, the amount of the net annual premium upon which the deduction provided for in the preceding subsections is to be based, shall be the net annual premium exclusive of the premium for such accident or sickness benefits.

Annuity
contracts.

(7) In the case of annuity contracts, whether immediate or deferred, the valuation basis shall be the British Offices' Select Life Annuity Tables, 1893 (male or female according to the sex of the nominee) with interest at three and one-half per centum per annum. 1924, c. 50, s. 69.

Insurance with Unlicensed Insurers.

75. Notwithstanding anything in this Act contained, any person may insure property situated in Ontario against fire with an unlicensed insurer, and any property insured or to be insured under the provisions of this section may be inspected and any loss incurred in respect thereof adjusted: provided such insurance is effected outside of Ontario and without any solicitation whatsoever directly or indirectly on the part of the insurer. 1924, c. 50, s. 70.

Underwriters Agencies.

76.—(1) A policy of insurance shall not be issued through any underwriters agency under its own name for an insurer, unless such insurer is licensed to carry on business in Ontario and shall have obtained from the Superintendent a license to issue contracts of insurance through such underwriters agency.

(2) Every policy of insurance issued through any such underwriters agency shall be in a form approved by the Superintendent, and shall bear upon its face the name and address of the insurer in a prominent and conspicuous manner, and the name of the underwriters agency shall not appear on the face of the policy except as a countersignature thereto.

(3) On no other part of the policy shall the name of the underwriters agency appear except that for identification purposes the words "issued through the Underwriters Agency" may be printed on the filing back of the policy, following the name of the insurer and in type not larger than half the depth of that used in printing such name.

(4) Upon an application for a license under this section every such insurer shall furnish to the Superintendent evidence of its approval and adoption of the form of policy to be issued through the underwriters agency and of the authority of the underwriters agency or its agents to bind the said insurer.

(5) Every insurer licensed under this Act carrying on business or issuing any policy of insurance through any such underwriters agency shall file an annual return of the business transacted through the same underwriters agency in a form prescribed by the Superintendent. 1925, c. 54, s. 10.

Penalties.

77.—(1) Unless otherwise provided every person guilty of any act or omission prohibited or required by this Act shall incur a penalty of not less than \$20 and not more than \$200 for every such offence.

Suspension
of license.

(2) In addition, where an insurer violates the prohibitions or fails to comply with the requirements of this Act, the Lieutenant-Governor in Council may, upon the report of the Superintendent, suspend or cancel the license of the insurer.

Burden of
proof of
license.

(3) In any prosecution under this Act, whenever it appears that the defendant or the accused has done any act or been guilty of any omission in respect of which he would be liable to some penalty under this Act or the regulations made hereunder unless he had been duly licensed it shall be incumbent upon the defendant or the accused to prove that he is duly licensed.

Penalty for
continued
default.

(4) In case of default in making any return required by this Act to be made within a limited time, the insurer or the person required by this Act to make the return shall, in addition to the penalty provided by subsection 1 hereof, incur a further penalty of \$100 for every month or part thereof during which such insurer or person neglects to file any return so required.

Application
of Rev. Stat.,
c. 121.

(5) Any penalty imposed under this Act shall be recoverable under *The Summary Convictions Act* and when recovered shall be paid over to the Treasurer of Ontario for the use of the Province. 1924, c. 50, s. 72.

Fees and Regulations.

Fees.

78.—(1) Until otherwise prescribed by the Lieutenant-Governor in Council, the fees or taxes payable to the Department by an insurer or other person shall be as mentioned in Schedule "A."

When
payable.

(2) Such fees or taxes shall be paid before a license or the renewal of a license is issued.

Regulations.

(3) The Lieutenant-Governor in Council may make regulations,—

(a) altering or amending the scale of fees or taxes provided for in Schedule "A";

(b) extending the provisions of this Act or any of them to a system or class of insurance not particularly mentioned herein;

(c) generally for the better administration of the Department or the carrying out of the provisions of this Act;

Regulations
to be laid
before
Assembly.

(4) Every Order-in-Council made under this section shall be laid before the Assembly forthwith if the Assembly is then in session, and if not then in session then within fifteen days of the opening of the next session. 1924, c. 50, s. 73.

PART III.

INSURANCE CONTRACTS IN ONTARIO.

79. Except where otherwise provided and where not inconsistent with other provisions of this Act, the provisions of this Part shall apply to every contract of insurance made in Ontario other than contracts of life and accident and sickness insurance. 1924, c. 50, s. 74. Application.

80. Where the subject matter of a contract of insurance is property in Ontario or an insurable interest of a person resident within Ontario, the contract of insurance, if signed, countersigned, issued or delivered in Ontario or committed to the post office or to any carrier, messenger or agent to be delivered or handed over to the insured, his assign or agent in Ontario, shall be deemed to evidence a contract made therein, and the contract shall be construed according to the law thereof, and all moneys payable under the contract shall be paid at the office of the chief officer or agent in Ontario of the insurer in lawful money of Canada. 1924, c. 50, s. 75. Contracts to be deemed made in Ontario.

81.—(1) All the terms and conditions of the contract of insurance shall be set out in full in the policy or by writing securely attached to it when issued, and unless so set out no term of the contract or condition, stipulation, warranty or proviso modifying or impairing its effect shall be valid or admissible in evidence to the prejudice of the insured or beneficiary. Terms, etc., of contracts valid unless set out in full.

(2) Subsection 1 shall not apply to an alteration or modification of the contract agreed upon in writing by the insurer and the insured after the issue of the policy. Exception.

(3) Whether the contract does or does not provide for its renewal, but it is renewed by a renewal receipt it shall be a sufficient compliance with subsection 1, if the terms and conditions of the contract were set out as provided by that subsection and the renewal receipt refers to the contract by its number or date. Contents of renewal receipt.

(4) The proposal or application of the insured shall not be against him be deemed a part of or be considered with the contract of insurance except in so far as the Court may determine that it contains a material misrepresentation by which the insurer was induced to enter into the contract. What regard to be given to proposal.

(5) No contract of insurance shall contain or have endorsed upon it, or be made subject to, any term, condition, stipulation, warranty or proviso, providing that such contract shall be avoided by reason of any statement in the application therefore, or inducing the entering into of the contract by the insurer, unless such term, condition, stipulation, war- Contract not to be invalidated by erroneous statement in application unless material.

ranty or proviso is and is expressed to be limited to cases in which such statement is material to the contract, and no contract shall be avoided by reason of the inaccuracy of any such statement unless it is material to the contract.

Materiality,
how
decided.

(6) The question of materiality in any contract of insurance shall be a question of fact for the jury, or for the Court if there is no jury; and no admission, term, condition, stipulation, warranty or proviso to the contrary contained in the application or proposal for insurance, or in the instrument of contract, or in any agreement or document relating thereto shall have any force or validity. 1924, c. 50, s. 76 (1-6).

Application.

(7) This section shall not apply to contracts of fire or automobile insurance. 1926, c. 49, s. 14.

Copy of
proposal to
be furnished
to insured.

82. Every insurer shall upon request furnish to the insured a true copy of his application or proposal for insurance. 1924, c. 50, s. 77.

No contract
shall be
inconsistent
with Act.

83.—(1) No insurer shall make a contract of insurance inconsistent with the provisions of this Act.

Rights of
insured.

(2) Any act or omission of the insurer resulting in imperfect compliance with any of the provisions of this Act shall not render a contract invalid as against the insured. 1924, c. 50, s. 78.

Insurance
where loss
caused by
insured
through
negligence.

84. It shall be lawful for an insurer to contract to indemnify an insured against financial loss occasioned by reason of liability to a third person whether or not the loss has been caused by the insurer through negligence or while violating the provisions of any municipal by-law or any Act of this Legislature. 1924, c. 50, s. 79.

Right of
claimant
against in-
surer where
execution
against
insured
returned
unsatisfied.

85.—(1) In any case in which a person insured against liability for injury or damage to persons or property of others has failed to satisfy a judgment obtained by a claimant for such injury or damage and an execution against the insured in respect thereof is returned unsatisfied, such execution creditor shall have a right of action against the insurer to recover an amount not exceeding the face amount of the policy or the amount of the judgment in the same manner and subject to the same equities as the insured would have if the said judgment had been satisfied. 1924, c. 50, s. 80.

Costs.

(2) When an action is brought against any person in respect of any matter against which he has been insured and the insurer conducts the defence, if the insurer at any time before the statement of defence is filed, files a notice in the office in which the proceedings are being carried on stating that it is defending the action on behalf of the defendant, the judge shall, if costs are awarded against the plaintiff, direct

the same to be paid to the insurer and, if costs are awarded to the plaintiff, direct the same to be paid by the insurer.

(3) The notice shall form part of the record but the fact Notice. that the defendant is insured shall not be communicated to the jury during the course of the trial. 1927, c. 59, s. 4.

86.—(1) Where several actions are brought for the recovery of money payable under a contract of insurance the Court may consolidate or otherwise deal therewith so that there shall be but one action for and in respect of all the claims made in such actions. Consolidation of actions for insurance money.

(2) Where an action is brought to recover the share of one or more infants all the other infants entitled, or the trustees, executors, or guardians entitled to receive payment of the shares of such other infants, shall be made parties to the action, and the rights of all the infants shall be determined in one action. Where infants are entitled to insurance money.

(3) In all actions where several persons are interested in the insurance money the court or judge may apportion among the persons entitled any sum directed to be paid, and may give all necessary directions and relief. Apportionment of sums directed to be paid.

(4) Where the person entitled to receive money due and payable under any contract of insurance, except insurance of the person, is domiciled or resides in a foreign jurisdiction and payment, valid according to the law of such jurisdiction, is made to such person, such payment shall be valid and effectual for all purposes. 1924, c. 50, s. 81. When payee is domiciled or resident abroad.

87.—(1) Where the contract of insurance has been delivered it shall be as binding on the insurer as if the premium had been paid, although it has not in fact been paid, and although delivered by an officer or agent of the insurer who had not authority to deliver it. Effect of delivery of policy or receipt for premium.

(2) The insurer may sue for the unpaid premium and may deduct the same from the amount for which he may become liable under the policy or contract of insurance. Right of insurer in respect of unpaid premium.

(3) Where the premium is paid by a cheque or a promissory note and the cheque is not paid on presentation or the promissory note at maturity the contract shall at the option of the insurer be voidable. 1924, c. 50, s. 82. Where note or cheque for premium not paid.

88.—(1) Every insurer shall, immediately upon receipt of notice of any claim under a contract of insurance, forward to the insured or person to whom the insurance money is payable printed forms upon which to make the proof of loss required under the contract. Insurer to furnish forms.

(2) Every insurer who neglects or refuses to comply with the provisions of the preceding subsection shall be guilty of an offence. 1924, c. 50, s. 83. Penalty.

When action
may be
brought
under
contract.

89.—(1) No action shall be brought for the recovery of money payable under a contract of insurance until the expiration of sixty days after proof, in accordance with the provisions of the contract, of the loss or of the happening of the event upon which the insurance money is to become payable or such shorter period as may be prescribed by any enactment regulating the contracts of the insurer or as may be fixed by the contract of insurance.

Beneficiary
etc. of
contract
may sue in
his own
name.

(2) After such sixty days or shorter period, any person entitled as beneficiary or by assignment or other derivative title to the insurance money, and having the right to receive the same and to give an effectual discharge therefor, may sue for the same in his own name, any rule, stipulation or condition to the contrary notwithstanding. 1924, c. 50, s. 84.

Insurance as Collateral Security.

Mortgagee
not to receive
commission
from insurer.

90.—(1) A mortgagee shall not accept or be entitled to receive either directly or through his agent or employee, and no officer or employee of such mortgagee shall accept or receive any commission or other remuneration or benefit in consideration of effecting a contract of insurance or renewal thereof under which contract loss, if any, is payable to him as mortgagee.

Payment of
commission
prohibited.

(2) No insurer or agent or broker shall pay, allow or give any commission or other remuneration or benefit to a mortgagee or to any person in his employ or on his behalf, in consideration of effecting a contract of insurance or renewal thereof, under which contract loss, if any, is payable to him as mortgagee.

Offence.

(3) Any insurer or other person who contravenes the provisions of this section shall be guilty of an offence. 1924, c. 50, s. 85.

Contracts of Guarantee Insurance.

Contracts
of title
insurance.

91.—(1) Every contract of title insurance shall be in writing, and in addition to the other requirements prescribed by this Act shall expressly limit the liability of the insurer to a sum stated in the contract.

Questions
as to valid-
ity of title.

(2) If any question arises as to the validity of the title insured, or as to the liability of the insurer, the insurer or the insured or any person entitled to proceed in right of either may by application have such question determined as provided in *The Vendors' and Purchasers' Act* in the case of vendors and purchasers. 1924, c. 50, s. 86.

Rev. Stat.
c. 153.

Resident Agent.

92.—(1) No licensed insurer shall undertake any contract of fire insurance upon property, real or personal, situate in Ontario or described in any contract as situate in Ontario, except after the risk has been approved and the contract, completed in accordance with section 97, signed or countersigned by a licensed agent who is a resident of Ontario and who is to receive the commission or some part thereof when the premium stipulated in the contract is paid.

Approval of contract by licensed agent.

(2) This section shall not apply to any such contract undertaken through an agent resident in any foreign jurisdiction wherein a contract of fire insurance on property situate or described as situate in such jurisdiction is not, if made in Ontario, required to be approved, signed or countersigned by an agent resident in such foreign jurisdiction, or to any such contract covering rolling stock of a railroad corporation or property in transit which is in the possession or custody of a railroad corporation or other common carrier or to moveable property of any such common carrier used or employed in the business of a common carrier.

Exception as to insurance through agent in foreign jurisdiction.

(3) "Insurer" in this section shall be deemed to mean and include only a joint stock insurance company, cash mutual insurance corporation and any insurance company described in clause *f* of section 23 of this Act. 1925, c. 54, s. 11.

"Insurer," meaning of.

PART IV.

FIRE INSURANCE.

93. In this Part, unless the context otherwise requires:—

Interpretation.

1. "Agricultural Property" includes dwelling-houses, stables, barns, sheds and outbuildings, and their contents, waggons, carriages, and other vehicles, saddles and harness; agricultural engines; implements, tools, instruments, appliances and machinery; household goods, wearing apparel, provisions, musical instruments, and libraries; livestock; growing crops, and crops severed from the land; fruit and ornamental trees, shrubs and plants; and live or standing timber, being upon farms as farm property, and owned by members of the insurer in which the property is insured; 1924, c. 50, s. 87, par. 1; 1925, c. 54, s. 12.
2. "Contract" means a contract of insurance against loss of or damage to property in the Province or in transit therefrom or thereto, caused by fire, lightning or explosion, and includes a policy, cer-

"Agricultural Property."

"Contract."

tificate, interim receipt, renewal receipt or writing evidencing the contract, whether sealed or not, and a binding oral agreement;

"Property."

3. "Property" includes use and occupancy, rents, profits and charges where these are the subject matter of the insurance. 1924, c. 50, s. 87, pars. 2, 3.

Application of Part.

94.—(1) This Part shall apply to fire insurance and to any insurer carrying on the business of fire insurance in the province.

Automobiles.

(2) This Part shall not apply to the insurance of automobiles against loss or damage by fire except when they are insured as provided in subsection 3 of section 95 hereof. 1924, c. 50, s. 88.

What rights may be insured against.

95.—(1) Every insurer licensed for the transaction of fire insurance may, within the limits and subject to the restrictions prescribed by the license, insure or reinsure any property in which the insured has an insurable interest against damage or loss by fire, lightning or explosion, whether the same happens by accident or by any other means except that of design on the part of the insured.

Loss from defects in or injuries to fire appliances.

(2) An insurer licensed under this Act for the transaction of fire insurance, and insuring any manufacturing or mercantile risk, may either by the same or by a separate contract insure the same risk against loss or damage arising from defects in or injuries to sprinklers or other fire extinguishing apparatus, or arising from tornado or windstorm. 1924, c. 50, s. 89 (1, 2).

Insurance of automobiles.

(3) An insurer licensed under this Act for the transaction of fire insurance may insure an automobile against loss or damage by fire under a fire insurance policy; provided that in the case of a purely mutual fire insurance corporation, incorporated or licensed in Ontario and carrying on business on the premium note plan, such automobile shall be specifically insured under a policy separate from that insuring other property. 1926, c. 49, s. 15.

96. No contract shall be made,—

Term of contract.

(a) for a term exceeding one year in the case of a mercantile or manufacturing risk, whether on building or contents, or on other property or interest, on the cash plan; or

(b) for a term exceeding three years in all other cases; but any contract may be renewed by the delivery of a renewal receipt or a new premium note. 1924, c. 50, s. 90.

97. Every policy shall contain the name of the insurer, the name of the insured, the name of the person or persons to whom the insurance money is payable, the premium or other consideration for the insurance, the subject matter of the insurance, the indemnity for which the insurer may become liable, the event on the happening of which such liability is to accrue and the term of the insurance. 1924, c. 50, s. 91.

Contents of
policy.

98.—(1) The conditions set forth in this section shall be deemed to be part of every contract in force in Ontario, except contracts where the subject matter of the insurance is exclusively rents, charges or loss of profits, and shall be printed on every policy with the heading "Statutory Conditions," and, subject to the provisions of section 102, no variation, omission or addition thereto shall be binding on the insured.

Statutory
Conditions

(2) Where the subject matter of the insurance is exclusively rents, charges or loss of profits the conditions 1, 2, 4, 5, 6, 7, 8, 9, 10, 14, 16, 17, 18, 20, 21, 22, 23, and 24, as set forth in this section shall be deemed to be part of every such contract in force in Ontario and shall be printed on every such policy with the heading "Statutory Conditions," and no variation or omission and no addition which is inconsistent with the said statutory conditions shall be binding on the insured. 1924, c. 50, s. 92 (1, 2).

Proviso.

STATUTORY CONDITIONS.

Misrepresentation 1. If any person applying for insurance falsely describes the property to the prejudice of the insurer, or misrepresents or fraudently omits to communicate any circumstance which is material to be made known to the insurer in order to enable it to judge of the risk to be undertaken, the contract shall be void as to the property in respect of which the misrepresentation or omission is made.

Form of Contract 2. After application for insurance, if the same is in writing, it shall be deemed that any policy sent to the insured is intended to be in accordance with the terms of the application, unless the insurer points out in writing the particulars wherein it differs from the application, in which case the insured may, within two weeks from the receipt of the notification, reject the policy.

Property Not Insured 3. Unless otherwise specifically stated in the policy, money, books of account, securities for money, evidences of debt or title, and automobiles, tractors and other motor vehicles, are not insured.

Risks Not Covered 4. Unless otherwise specifically stated in the policy, the insurer is not liable for the losses following, that is to say:

- (a) for loss of or damage to property owned by any person other than the insured, unless the interest of the insured therein is stated in the policy;
- (b) for loss or damage caused by invasion, insurrection, riot, civil commotion, military or usurped power;

- (c) for loss due to the want, within the knowledge of the insured, of good and substantial chimneys; or caused by ashes or embers being deposited, with the knowledge and consent of the insured, in wooden vessels; or by stoves or stove-pipes being, to the knowledge of the insured, in an unsafe condition or improperly secured; or
- (d) for loss of or damage to goods while undergoing any process in or by which the application of fire heat is necessary.

Risks Not Covered 5. Unless permission is given by the policy or **Except By Special** endorsed thereon, the insurer shall not be liable **Permission** for loss or damage occurring.

Repairs (a) to buildings or their contents during alteration or repair of the buildings and in consequence thereof; fifteen days being allowed in each year for incidental alterations or repairs without such permission;

Inflammable Substances (b) while illuminating gas or vapour is generated by the insured, or to his knowledge, in the building insured or which contains the property insured, or while there is stored or kept therein by the insured, or to his knowledge, by any person under his control, petroleum or any liquid product thereof, coal oil, camphene, gasoline, burning fluid, benzine, naphtha, or any of their constituent parts (refined oil for lighting, heating or cooking purposes only, not exceeding five gallons in quantity, gasoline, if contained in a tightly closed metallic can free from leaks and not exceeding one quart in quantity, or lubricating oil not being crude petroleum nor oil of less specific gravity than is required by law for illuminating purposes, not exceeding five gallons in quantity, excepted), or more than twenty-five pounds weight of gunpowder, dynamite or similar explosives;

Change of Interest (c) after the interest of the insured in the subject-matter of the insurance is assigned, but this condition is not to apply to an authorized assignment under *The Bankruptcy Act* or to change of title by succession, by operation of law, or by death;

Vacancy (d) when the building insured or containing the property insured is, to the knowledge of the insured, vacant or unoccupied for more than thirty consecutive days, or being a manufacturing establishment, ceases to be operated and continues out of operation for more than thirty consecutive days.

Explosion and Lightning 6. The insurer will make good loss or damage caused by lightning or by the explosion of coal or natural gas in a building not forming part of gas works, whether fire ensues therefrom or not; and loss or damage by fire caused by any other explosion; but, if electrical appliances or devices are insured, any loss or damage to them caused by lightning or other electrical currents is excluded and the insurer shall be liable only for such loss or damage to them as may occur from fire originating outside the article itself.

Material Change 7. Any change material to the risk and within the control and knowledge of the insured shall avoid the policy as to the part affected thereby, unless the change is promptly notified in writing to the insurer or its local agent; and the insurer when so notified may return the unearned portion, if any, of the premium paid and cancel the policy, or may notify the insured in writing that, if he desires the policy to continue in force, he must

within fifteen days of the receipt of the notice pay to the insurer an additional premium, and in default of such payment the policy shall no longer be in force and the insurer shall return the unearned portion, if any, of the premium paid.

Other Insurance 8. (a) If the insured has at the date of this policy any other insurance on property covered thereby which is not disclosed to the insurer, or hereafter effects any other insurance thereon without the written assent of the insurer, he shall not be entitled to recover more than sixty per cent. of the loss in respect of such property; but if for any fraudulent purpose the insured does not disclose such other insurance, this policy shall be void.

(b) The insurer shall be deemed to have assented to such other insurance unless it dissents by notice in writing within two weeks after notice thereof.

(c) In the event of there being any other insurance on property herein described at the time of the happening of a loss in respect thereof, the insurer shall be liable only for payment of a rateable proportion of the loss or a rateable proportion of such amounts as the insured shall be entitled to recover under clause (a) of this condition.

Mortgagees and Other Payees 9. Where the loss, if any, under a policy has, with the consent of the insurer, been made payable to some person other than the insured, the policy shall not be cancelled or altered by the insurer to the prejudice of such person without reasonable notice to him.

Termination of Insurance 10.—(1) The insurance may be terminated:

(a) subject to the provisions of condition 9, by the insurer giving to the insured at any time fifteen days' notice of cancellation by registered mail, or five days' notice of cancellation personally delivered, and, if the insurance is on the cash plan, refunding the excess of premium actually paid by the insured beyond the *pro rata* premium for the expired time;

(b) if on the cash plan, by the insured giving written notice of termination to the insurer, in which case the insurer shall, upon surrender of this policy, refund the excess of premium actually paid by the insured beyond the customary short rate for the expired time.

(2) Repayment of the excess premium may be made by money, post office order or postal note or by cheque payable at par and certified by a chartered bank doing business in the Province. If the notice is given by registered letter, such repayment shall accompany the notice, and in such case the fifteen days mentioned in clause (a) of this condition shall commence to run from the day following the receipt of the registered letter at the post office to which it is addressed.

Salvage 11. After any loss or damage to insured property, it shall be the duty of the insured, when and as soon as practicable, to secure the insured property from further damage, and to separate as far as reasonably may be the damaged from the undamaged property, and to notify the insurer of the separation.

Insurance on Goods Moved 12. If any of the insured property is necessarily removed to prevent damage or further damage thereto, that part of the insurance under this policy which exceeds the amount of the insurer's liability for any loss already incurred shall for seven days only, or for the unexpired term if less than seven days, cover the property removed and any property remaining in the original location in the proportions which the

value of the property in the respective locations bears to the value of the property in them all; and the insurer will contribute *pro rata* towards any loss or expense connected with such act of salvage, according to the respective interests of the parties.

Entry, Control, 13. After any loss or damage to insured property, **Abandonment** the insurer shall have an immediate right of access and entry by accredited agents sufficient to enable them to survey and examine the property, and to make an estimate of the loss or damage, and, after the insured has secured the property, a further right of access and entry sufficient to enable them to make appraisal or particular estimate of the loss or damage, but the insurer shall not be entitled to the control or possession of the insured property, or the remains or salvage thereof, unless it accepts a part thereof at its agreed value or its value as ascertained according to condition 17 or undertakes replacement under condition 19, and without the consent of the insurer there can be no abandonment to it of insured property.

Who To Make 14. Proof of loss must be made by the insured, **Proof of Loss** though the loss is payable to a third person, except that, in case of the absence of the insured or his inability to make the same, proof may be made by his agent, such absence or inability being satisfactorily accounted for, or in the like case or if the insured refuse to do so, by a person to whom any part of the insurance money is payable.

Requirements 15. Any person entitled to claim under this policy **After Loss** shall:

- (a) forthwith after loss give notice in writing to the insurer;
- (b) deliver, as soon thereafter as practicable, a particular account of the loss;
- (c) furnish therewith a statutory declaration declaring:
 - (i) that the account is just and true;
 - (ii) when and how the loss occurred, and if caused by fire, how the fire originated, so far as the declarant knows or believes;
 - (iii) that the loss did not occur through any wilful act or neglect or the procurement, means or connivance of the insured;
 - (iv) the amount of other insurances and names of other insurers;
 - (v) all liens and encumbrances on the property insured;
 - (vi) the place where the property insured, if moveable, was deposited at the time of the fire;
- (d) if required and if practicable, produce books of account, warehouse receipts and stock lists, and furnish invoices and other vouchers verified by statutory declaration, and furnish a copy of the written portion of any other policy. The evidence furnished under this clause shall not be considered proofs of loss within the meaning of conditions 18 and 19.

Fraud 16. Any fraud or wilfully false statement in a statutory declaration, in relation to any of the above particulars, shall vitiate the claim of the person making the declaration.

Arbitration 17. If any difference arises as to the value of the property insured, the property saved, or the amount of the loss, such value and amount and the proportion thereof, if any, to be paid by the insurer shall, whether the right to recover on the policy is disputed or not, and independently of all other questions, be submitted to the arbitration of some person to be chosen by both parties, or if they cannot agree on one person, then to two persons, one to be chosen by the insured and the other by the insurer, and a third to be appointed by the persons so chosen, or on their failing to agree, then by a Judge of the County or District Court of the

County or District in which the loss has happened; and such reference shall be subject to the provisions of *The Arbitration Act*; and the award shall, if the insurer is in other respects liable, be conclusive as to the amount of the loss and the proportion to be paid by the insurer; where the full amount of the claim is awarded the costs shall follow the event; and in other cases all questions of costs shall be in the discretion of the arbitrators.

When Loss Payable 18. The loss shall be payable within sixty days after completion of the proofs of loss, unless the contract provides for a shorter period.

Replacement 19. The insurer, instead of making payment, may repair, rebuild or replace the property damaged or lost, giving written notice of its intention so to do within fifteen days after receipt of the proofs of loss. In such event the insurer shall commence to so repair, rebuild or replace the property within thirty days after receipt of the proofs of loss and shall thereafter proceed with all due diligence to the completion thereof.

Action 20. Every action or proceeding against the insurer for the recovery of any claim under or by virtue of this policy shall be absolutely barred unless commenced within one year next after the loss or damage occurs.

Agency 21. Any officer or agent of the insurer who assumes on behalf of the insurer to enter into a written agreement relating to any matter connected with the insurance shall be deemed *prima facie* to be the agent of the insurer for the purpose.

Waiver of Condition 22. No condition of this policy shall be deemed to have been waived by the insurer, either in whole or in part, unless the waiver is clearly expressed in writing signed by an agent of the insurer.

Notice 23. Any written notice to the insurer may be delivered at or sent by registered post to the chief agency or head office of the insurer in the Province or delivered or so sent to any authorized agent of the insurer therein. Written notice may be given to the insured by letter personally delivered to him or by registered letter addressed to him at his last post office address notified to the insurer, or, where no address is notified and the address is not known, addressed to him at the post office of the agency, if any, from which the application was received.

Subrogation 24. The insurer may require from the insured an assignment of all right of recovery against any other party for loss or damage to the extent that payment therefor is made by the insurer.

99.—(1) A policy may contain a co-insurance clause, in which case it shall have printed or stamped upon its face in conspicuous type and in red ink the words "This policy contains a co-insurance clause," and unless those words are so printed or stamped such clause shall not be binding upon the insured. Such clause shall not be deemed a variation or addition to the statutory conditions.

Co-insurance clause.

(2) A policy may contain a partial payment of loss clause to the effect that the insurer in the event of loss shall pay only an agreed proportion of any loss which may be sustained or the amount of the loss after deduction of a sum specified in the policy, in either case not exceeding the amount of the

Partial payment of loss clause.

insurance, in which case there shall be printed or stamped upon the face of the policy in conspicuous type in red ink, the words: "This policy contains a partial payment of loss clause." Such partial payment of loss clause shall not be deemed a variation or addition to the statutory conditions. 1924, c. 50, s. 93.

Use of red ink.

100. No red ink shall be used on the face of a policy except for the name, address and emblem of the insurer, the policy number and for the purposes mentioned in this Act. 1924, c. 50, s. 94.

Relief from forfeiture.

101. In any case where there has been imperfect compliance with a statutory condition as to the proof of loss to be given by the insured and a consequent forfeiture or avoidance of the insurance, in whole or in part, and the court deems it inequitable that the insurance should be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as may seem just. 1924, c. 50, s. 95.

Special stipulations.

102. Where the rate of premium is affected or modified by the user, condition, location, or maintenance of the insured property, the policy may contain a clause not inconsistent with any statutory condition setting forth any stipulation in respect of such user, condition, location or maintenance, and such clause shall not be deemed a variation of any statutory condition. Such clause shall be binding on the insured only in so far as it is held by the court before which a question relating thereto is tried to be just and reasonable. 1927, c. 59, s. 5.

Premium Notes and Assessments.

Application of sections 104-118.

103. Sections 104 to 118 shall apply only to mutual and cash mutual fire insurance corporations and, saving sections 105, 106, 107 and 114 to mutual live-stock and mutual weather insurance corporations which carry on business on the premium note plan. 1924, c. 50, s. 97.

Insurer may accept premium notes.

104.—(1) The insurer may accept the premium note of the insured for insurance and may undertake contracts in consideration thereof and such notes shall be subject to cash payments and assessments for the losses, expenses and reserve of the insurer in the manner hereinafter provided.

Form of note.

(2) The premium note shall be in the form prescribed by Schedule "B" to this Act.

Nothing but notice to appear on same paper.

(3) Nothing but the notice provided by section 115 shall be written upon the same paper upon which the premium note is written, and a violation of this section shall render the premium note void. 1924, c. 50, s. 98.

105. The rate to be charged or taken by way of premium Minimum rates. note for insuring agricultural property, other than brick, stone or concrete dwellings, shall be not less than three dollars for three years for every one hundred dollars of insurance, and the minimum rate upon other property may be increased or decreased relatively with the risk according to the nature of the property. 1924, c. 50, s. 99.

106.—(1) Subject to the provisions of subsection 3, the Minimum cash payment. directors shall require at the time of the application for insurance of agricultural property other than brick, stone or concrete dwellings, a cash payment on the premium note of not less than eighty cents for three years for every one hundred dollars of insurance and may require a larger or smaller cash payment at the time of the application for the insurance of other property; provided, that not more than sixty per centum of any premium note shall be paid in cash at the time of the application for or of effecting the insurance. 1924, c. 50, s. 100 (1).

(2) The cash payment required at the time of the appli- Reduction of, by directors. cation for insurance of agricultural property, other than brick, stone or concrete dwellings, may be reduced with the approval of the Superintendent by the directors when and so long as the cash surplus of the insurer is not less than twenty-five cents for every one hundred dollars of the total amount at risk. 1924, c. 50, s. 100 (2); 1925, c. 54, s. 14.

(3) Instead of requiring the cash payment to be paid in Cash pay- ment may be paid in annual instalments. full at the time of the application for insurance, the directors may make the cash payment payable in three equal annual instalments of not less than thirty cents each for every one hundred dollars of insurance on agricultural property other than brick, stone or concrete dwellings, and *pro rata* on other property, the first of which shall be due and payable at the time of the application for insurance and the remaining instalments shall be respectively due and payable on the first day of each subsequent year of the term of insurance.

(4) "Cash surplus" as used in this section shall mean the "Cash surplus." assets of the insurer other than the premium note residue after deducting therefrom all liabilities of the insurer (other than contingent liabilities on unmatured contracts) and the proportion of cash payments paid in advance applicable to the third year or second and third years as the case may be of unexpired policy contracts. 1924, c. 50, s. 100 (3, 4).

107.—(1) The cash payment or instalments thereof Assessments. required to be paid by the preceding section at the time of the application for insurance shall be applied in part payment of the premium note, and the premium note residue shall be subject to assessments by the directors in such sums and at such times as they may determine for reserve and for losses

and expenses incurred during the currency of the policies for which such notes were given.

When due.

(2) Every assessment shall be due and payable within thirty days after notice stating the amount and date of the assessment has been given in the manner hereinafter provided. 1924, c. 50, s. 101.

Penalty for default in payments.

108.—(1) Default in making the cash payment or any instalment thereof within thirty days after notice of it becoming due, or of its non-payment when due, has been given in the manner hereinafter provided, or default in paying any assessment authorized by the directors within thirty days after notice has been given as required by subsection 2 of section 107, shall, unless the directors determine otherwise, render the contract of insurance null and void as to all claims for loss occurring during the time of default; but subject thereto the contract shall be revived if and when the cash payment or instalments thereof or the assessment so in default has been paid.

Liability of insured.

(2) Nothing herein contained shall relieve the insured of his liability to pay the cash payment and all assessments lawfully imposed by the directors during the full term of the policy or within forty days thereafter in respect of which the prescribed notice has been given, or prejudice the right of the insurer after giving the required notice to sue for and recover the same with the costs of the suit.

Evidence of amount due insurer.

(3) Where an action is brought to recover an assessment the certificate of the secretary of the insurer specifying the assessment and the amount due on the note in respect of such assessment shall be *prima facie* evidence thereof in any court. 1924, c. 50, s. 102.

Notice.

109.—(1) The notices required to be given by sections 107 and 108 shall be sufficient if mailed to the person by whom the cash payment, or any instalment thereof, or the assessment as the case may be, is payable, addressed to his post office address given in the original application, or otherwise given in writing, to the insurer, and if it states the register number of the contract, the time when, and the place where, the amount is payable.

Section 108 (1) to be printed on notices.

(2) Subsection 1 of section 108 of this Act shall be printed in full upon the face of all such notices.

Notice to mortgagee.

(3) If the property insured has been mortgaged and the insurer has assented to the mortgage the notices respecting assessments and cash payments herein required to be mailed to the payee shall also be mailed to the mortgagee if his post office address is known to the insurer, and if notice is not so given the contract shall be deemed to be valid and subsisting as to the interest of the mortgagee. 1924, c. 50, s. 103.

110. Forty days after the expiration of the term of insurance or after the insured has sustained a total loss in respect of the property insured the premium note given for the term shall be null and void except as to the cash payment or instalments thereof remaining unpaid and as to lawful assessments of which the prescribed written notice has been given to the maker of the premium note during the currency of the policy or within such period of forty days, and on the expiration of such period the premium note shall upon application therefor be surrendered to the maker, provided all liabilities with which the premium note is chargeable have been paid. 1924, c. 50, s. 104.

Return of premium note on termination of insurance.

111. If there is a loss on property insured the directors may retain out of the insurance money the cash payment or any instalments thereof, or any lawful assessment due and payable and remaining unpaid by the insured. 1924, c. 50, s. 105.

Cash payment and assessments may be retained out of insurance money.

112. The directors may reinsure any risk undertaken on the premium note plan with any other insurer of the same class, and may authorize the execution of a premium note by the proper officer of the insurer, and the insurer shall in respect of such reinsurance contract have the same rights and be subject to the same obligations as a member of the reinsurer. 1924, c. 50, s. 106.

Reinsurance of individual risks.

113.—(1) Subject to the approval of the Superintendent, the directors of any insurer licensed to transact insurance on the premium note plan may enter into a general reinsurance agreement with any other insurer of the same class for the reinsurance of risks on such terms and conditions as may be agreed upon.

General reinsurance agreement.

(2) The agreement authorized by subsection 1 may dispense with the issue of policies and the execution of premium notes.

Policies and notes unnecessary.

(3) Every such agreement shall be in writing and under the corporate seals of the parties thereto. 1924, c. 50, s. 107.

Writing and seals.

114.—(1) No insurer shall undertake any risk on the premium note plan which is subject to the hazard of a single fire for an amount greater than that allowed by the following table unless such risk is reinsured to an amount sufficient to reduce the net liability of the insurer to the amount authorized in such table:—

Compulsory reinsurance.

TABLE.

When the total amount at risk is less than	\$4,000,000	.....	\$3,000
“ “ “ “	5,000,000	.....	4,000
“ “ “ more than	5,000,000	.....	5,000

Meaning of risk subject to hazard of single fire.

(2) A risk subject to the hazard of a single fire shall be deemed to include, in the case of agricultural property, other than brick, stone or concrete dwellings, the total amount at risk on barns, outbuildings, contents, machinery, and all other items in connection therewith except livestock or a dwelling distant more than 80 feet from any other insured farm building; and in all other cases the total amount at risk on buildings or their contents where such buildings are distant less than 80 feet from each other.

Penalty for failure to reinsure.

(3) Where an insurer fails to reinsure any risk which is subject to the hazard of a single fire and for an amount greater than that allowed by the table set out in subsection 1, the Minister, on the report of the Superintendent, may suspend or cancel the license of the insurer.

Rights of insured.

(4) Nothing in this section shall render a contract invalid as against the insured. 1924, c. 50, s. 108.

Exception.

(5) This section shall not apply to an insurer which is restricted by its license to the insurance against fire and lighting of buildings, plant and stock of millers and grain dealers used in connection with the grain trade. 1925, c. 54, s. 15.

Actions in division court where brought.

115. Any action upon any premium note or for an assessment thereon cognizable in a division court may be entered, tried and determined in the court for the division wherein the head office or any agency of the insurer is located, where and where only within the body of such note, or across the face thereof, there was at the time of the making of it printed in conspicuous type, or in ink of a colour different from any other in or on such note, the words following: "Any action which may be brought or commenced in a division court in respect or on account of this note, or any sum to be assessed thereon may be brought and commenced against the maker hereof in the division court for the division wherein the head office or any agency of the insurer is located." 1924, c. 50, s. 109.

Premium notes not to create lien on land.

116. No premium note shall create a lien upon the land on which the insured property is situate. 1924, c. 50, s. 110.

Powers of incorporated insurers to insure on the cash principle.

117.—(1) An insurer licensed to transact cash-mutual fire insurance may effect insurance upon the cash plan, for a period not exceeding three years, on risks other than mercantile and manufacturing, and for one year or less on any other class of property, but the amount of premiums received on cash insurances in any one calendar year shall not exceed four times the amount which the insurer has then on deposit with the Minister.

When deposit must be increased.

(2) If at any time the amount of such premiums exceeds the amount authorized by subsection 1 the insurer shall at once increase its deposit to an amount sufficient to warrant

the excess, and in default the Minister may suspend or cancel its license.

(3) All the property and assets of the insurer, including premium notes, shall be liable for all losses under contracts of insurance for cash premiums. 1924, c. 50, s. 111.

What funds liable for losses.

118.—(1) No execution shall issue against a mutual or cash-mutual insurer upon a judgment until after the expiration of sixty days from the recovery thereof, but this section shall not apply to a judgment recovered on a contract of insurance where more than sixty per centum of the premium, or premium note, was paid in cash at the time of the insurance or the application therefor.

When execution upon judgment against insurer.

(2) A Judge of the Supreme Court or the Master in Chambers, after the recovery of a judgment against the insurer, upon the application of the judgment creditor and upon notice to the insurer, may inquire into the facts, and if he finds that more than sixty per centum of the premium note was paid in cash at the time of the insurance, or upon the application therefor, he may direct that execution be issued forthwith upon such judgment. 1924, c. 50, s. 112.

When order may be made for issue.

PART V.

LIFE INSURANCE.

119. In this Part, unless the context otherwise requires:—

Interpretation.

1. "Beneficiary" means a person designated or appointed as one to whom or for whose benefit insurance money is to be payable;

"Beneficiary."

2. "Contract" or "contract of insurance" means a contract of life insurance;

"Contract."

3. "Contract of life insurance" means a contract by which the insurer undertakes with the insured to pay insurance money contingently on the death, or on the duration of the life, of a designated human being;

"Contract of life insurance."

4. "Court" means the Supreme Court or a judge thereof;

"Court."

5. "Declaration" means an instrument in writing signed by the insured, attached to or endorsed on a policy, or an instrument in writing, signed by the insured in any way identifying the policy or describing the subject of the declaration as the insurance or insurance fund or a part thereof or as the policy or policies of the insured or using language of like import, by which the insured designates or appoints a beneficiary or beneficiaries, or alters or revokes the designation or appointment of a beneficiary

"Declaration."

or beneficiaries, or apportions or reapportions, or appropriates or reappropriates, insurance money between or among beneficiaries;

"Foreign jurisdiction."

6. "Foreign jurisdiction" means any jurisdiction other than the Province;

"Fraternal society."

7. "Fraternal society" means a corporation, society, order or voluntary association incorporated or formed and carried on for the benefit of its members and their beneficiaries and not for profit, which makes provision by its constitution and laws for payment to beneficiaries of benefits on the death or disability of its members;

"Instrument in writing."

8. "Instrument in writing" includes a last will;

"Insurance."

9. "Insurance" means life insurance;

"Insurance money."

10. "Insurance money" includes all insurance money, benefits, surplus, profits, dividends, bonuses and annuities payable by an insurer under a contract of insurance;

"Insured."

11. "Insured" means the person who makes a contract of insurance with an insurer, and, unless the context otherwise requires, includes the person whose life is insured;

"Insurer."

12. "Insurer" includes any corporation, or any society or association, incorporated or unincorporated, any fraternal society or any person or partnership, or any underwriter or group of underwriters, that undertakes or effects, or agrees or offers to undertake or effect, a contract of insurance;

"Judge."

13. "Judge" means a judge of the court;

"Person."

14. "Person" includes firm, partnership, corporation and unincorporated society or association;

"Premium."

15. "Premium" means the single or periodical payment to be made for the insurance, and includes dues and assessments. 1924, c. 50, s. 113.

Application.

120.—(1) Notwithstanding any agreement, condition or stipulation to the contrary, this Part shall apply to every contract of life insurance made in the Province after the coming into force of this Part, and any term in any such contract inconsistent with the provisions of this Part shall be null and void.

(2) Unless hereinafter otherwise specifically provided, this Part shall apply to the unmatured obligations of every contract of life insurance made in the Province before the coming into force of this Part.

(3) This Part shall apply to every other contract of life insurance made after the coming into force of this Part, where the contract provides that this Part shall apply or that the contract shall be construed or governed by the law of the Province.

(4) Where this Part applies to any contract, the rights and status of beneficiaries and the powers of the insured with regard to the designation or appointment of beneficiaries and the apportionment of the insurance money shall be governed by the provisions of this Part, whether or not the insured or any of the beneficiaries is domiciled in the Province at the time at which the contract is made, or at any time subsequent thereto. 1924, c. 50, s. 114.

121. A contract is deemed to be made in the Province, When contract deemed to be made in the Province.

(a) If the place of residence of the insured is stated in the application or the policy to be in the Province; or,

(b) If neither the application nor the policy contains a statement as to the place of residence of the insured, but the actual place of residence of the insured is within the Province at the time of the making of the contract. 1924, c. 50, s. 115.

The Contract of Insurance.

122. Every contract of insurance shall be evidenced by an instrument in writing called in this Part a policy. 1924, c. 50, s. 116. Policy to evidence a contract.

123.—(1) Every policy issued after the coming into force of this Part by an insurer other than a fraternal society shall state the name or sufficient designation of the insured, of the person whose life is insured, and of the beneficiary, the insurance money payable, the manner of payment, the premium, and the facts which determine the maturity of the contract. Contents of policy.

(2) Where the amount of insurance money, exclusive of dividends and bonus, is less than one thousand dollars, the policy, notwithstanding that it is expressed to be payable to a named or designated beneficiary, may provide that the insurance money may be paid to any relative by blood or connection by marriage of the insured or any other person appearing to the insurer to be equitably entitled to the same by reason of having incurred expense for the maintenance, medical attendance or burial of the insured or to have a claim against the estate of the insured in relation thereto. 1924, c. 50, s. 117. Payment of policy for less than \$1,000.

Terms, etc.
of contracts
invalid
unless set
out in full.

124.—(1) Except in the case of a contract made with a fraternal society, no term or condition of a contract of insurance which is not set out in full in the policy or in a document or documents in writing attached to it, when issued, shall be valid or admissible in evidence to the prejudice of the insured or a beneficiary.

Subsequent
alterations.

(2) Subsection 1 shall not apply to an alteration or modification of the contract agreed upon in writing by the insurer and the insured after the issue of the policy.

Contract of
fraternal
society.

(3) In the case of a contract of insurance made by a fraternal society, the Act or instrument of incorporation, if any, the constitution and laws of the society and any amendments validly made to them or any of them, and the application and medical examination signed by the applicant, shall constitute the contract between the society and its member. 1924, c. 50, s. 118.

Disclosure
and mis-
representa-
tion.

125.—(1) The insured and the person whose life is insured shall each disclose to the insurer every fact within his knowledge which is material to the contract.

(2) Any conscious failure to disclose, or any misrepresentation of a fact material to the contract on the part of the insured or the person whose life is insured, shall render the contract voidable at the instance of the insurer.

(3) Any misrepresentation or fraudulent concealment on the part of the insurer of a fact material to the contract shall render the contract voidable at the instance of the insured. 1924, c. 50, s. 119.

Contracts
not void
unless fact
material.

126.—(1) No contract shall be rendered void or voidable by reason of any misrepresentation, or any failure to disclose on the part of the insured or the person whose life is insured, in the application for the insurance or on the medical examination or otherwise, unless the misrepresentation or failure to disclose is material to the contract.

(2) The question of materiality shall be one of fact. 1924, c. 50, s. 120.

Incontest-
ability after
two years.

127. The statements made by the insured, or the person whose life is insured, in the application and on the medical examination, except fraudulent statements or statements erroneous as to age, shall be deemed to be true and incontestable after the contract has been in force for two years during the lifetime of the person whose life is insured. 1924, c. 50, s. 121.

Age under-
stated.

128.—(1) Where the age of the person whose life is insured is understated in the application, the insurance money shall be reduced to the amount which would have been payable

in respect of the premium stated in the policy at the correct age, according to the tables of rates of premium of the insurer in force at the time of the issue of the policy.

(2) Where such tables of rates of premium of the insurer do not extend to or include the rates for the correct age of the person whose life is insured, the insurance money shall be reduced in the proportion that the premium at the age stated in the application bears to the premium at the correct age, both premiums for this purpose being the net premiums shown in or deduced from the British Offices Life Table, 1893, OM⁽⁵⁾, the rate of interest being three and one-half per centum per annum, or, at the option of the insurer, both premiums for this purpose being calculated on the same principles as govern the calculation of premiums for ages mentioned in the table of rates of premium of the insurer in force at the time of the issue of the policy.

Calculation of amount of benefits under policy.

(3) Where the age of the person whose life is insured is overstated in the application, and the policy does not provide that in that event the insurance money shall be increased, the insurer shall repay the amount by which the premium paid exceeds the premium which would have been payable in respect of the correct age, but if the policy so provides, the insurance money shall be increased to the amount which would have been payable in respect of the premium stated in the policy at the correct age according to the tables of rates of premium of the insurer in force at the time of the issue of the policy.

Where age overstated.

(4) Where, by the terms or for the purposes of the contract, an addition is made to the age stated in the application, and the age is understated in the application, then, for the purpose of the calculation, the correct age and the stated age shall respectively be deemed to be the correct age and the stated age increased by such addition.

What to be deemed correct age and stated age.

(5) Where the application or contract expressly limits the insurable age, and the correct age at the date of the application exceeds the age so limited, the contract shall, during the life-time of the person whose life is insured, but not later than five years from the date of the policy, be voidable at the option of the insurer within thirty days after the error comes to its knowledge. 1924, c. 50, s. 122.

Where insurable age expressly limited.

129.—(1) Unless the contract or the application otherwise expressly provides, the contract shall not take effect or be binding on either party until the policy is delivered to the insured, his assign, or agent, or the beneficiary named therein and payment of the first premium is made to the insurer or its duly authorized agent, no change having taken place in the insurability of the life about to be insured subsequent to the completion of the application.

When contract deemed to be completed.

Payment of
premium by
cheque or
note.

(2) Subject to the provisions of section 130, where a cheque, bill of exchange or promissory note payable to the insurer, or other written promise to pay the insurer, is given, whether originally or by way of renewal, for the whole or part of any premium, and the instrument, if payable on demand, is not paid upon presentment made on or after its date, or, if payable at a future time, is not paid upon presentment made at or after its maturity, the contract shall, unless otherwise provided in the policy, be void. 1924, c. 50, s. 123.

Thirty days
of grace for
payment of
premiums.

130.—(1) Where any premium (not being the initial premium), under any contract is unpaid, the insured, his assign or agent, or any beneficiary, may, within a period of grace of thirty days (or, in the case of a contract providing for the payment of premiums weekly, four weeks) from and excluding the day on which the premium is due, pay, deliver or tender to the insurer at its head office, or at its chief agency in the Province, or to its collector or authorized agent, the sum in default.

Mode of
payment.

(2) The payment may be made by sending a post office order or postal note, or a cheque payable at par and certified by a bank doing business in Canada under *The Bank Act*, or a draft of such bank, or a money order of an express company doing business in the Province, in a registered letter duly addressed to the insurer, and the payment, delivery or tender shall be deemed to have been made at the time of the delivery and registration of the letter at any post office.

Effect of
payment.

(3) Payment, delivery or tender as aforesaid shall have the same effect as if made at the due date of the premium.

Concurrent
period of
grace under
contract.

(4) The period of grace hereinbefore in this section mentioned shall run concurrently with the period of grace, if any, allowed by the contract for the payment of a premium or of an instalment of premium.

Deduction
of premium
where con-
tract
matures dur-
ing period
of grace.

(5) Upon the maturity of the contract during the said period of grace and before the overdue premium is paid, the contract shall be deemed to be in as full force and effect as if the premium had been paid at its due date, but the amount of such premium with interest (not in excess of six per centum per annum), and the balance, if any, of the current year's premium, may be deducted from the insurance money.

Extension
of period of
grace.

(6) Nothing in this section shall deprive the insured of the benefit of any period of grace allowed by the contract in excess of the period of grace allowed by this section. 1924, c. 50, s. 124.

Right of
insured to
copy of
application.

131. The insurer shall, upon request, furnish to the insured a true copy of the application for the insurance. 1924, c. 50, s. 125.

132. In a policy, or a declaration, the words "heirs," "legal heirs," "lawful heirs," or "next of kin" shall mean all persons entitled to share in the distribution of the personal estate of an intestate. 1924, c. 50, s. 126.

Meaning of
"heirs,"
"legal heirs,"
etc.

133. No officer, agent, employee or servant of the insurer or any person soliciting insurance, whether an agent of the insurer or not, shall to the prejudice of the insured be deemed to be for any purpose whatever the agent of the insured in respect of any question arising out of the contract of insurance. 1924, c. 50, s. 127.

Agent, etc.,
of insurer
not to be
agent of
insured.

Insurable Interest.

134. Every person has an insurable interest in his own life. 1924, c. 50, s. 128.

Insurable
interest of
adult in his
own life.

135. Without restricting the meaning which "insurable interest" now has in law, each of the following persons has an insurable interest:

Insurable
interest in
lives of
others.

- (a) A parent in the life of his child under twenty-five years of age;
- (b) A husband in the life of his wife;
- (c) A wife in the life of her husband;
- (d) One person in the life of another, upon whom he is wholly or in part dependent for support or education, or from whom he is receiving support or education;
- (e) A corporation or other person in the life of its or his officer or employee;
- (f) A person who has a pecuniary interest in the duration of the life of another person, in the life of that person. 1924, c. 50, s. 129.

136. The contract shall be void, if, at the time at which it would otherwise take effect and be binding, the insured has no insurable interest. 1924, c. 50, s. 130.

Contract
void without
insurable
interest.

137. Where the insured has at the time at which the contract takes effect an insurable interest in the life insured, it is not necessary for the validity of the contract or any assignment that any beneficiary, or any person claiming under an assignment, or by will or by succession, have an insurable interest. 1924, c. 50, s. 131.

When insur-
able interest
unnecessary.

Policies on the Lives of Minors.

Power of
minor re-
specting in-
surance on
his own life.

138.—(1) A minor over the age of fifteen years may effect contracts of insurance on his life and may do in respect of any such contract or of any contract of insurance on his life which he may have effected before attaining the said age whatever a person of full age may lawfully do, including the surrender of the contract, the borrowing of money on its security, the designation of beneficiaries and the alteration and revocation thereof, and the giving of receipts or discharges.

(2) In the case of insurance effected by a person of full age upon the life of a minor, the minor, after attaining the age of fifteen years, may, with the written consent of the person who effected the insurance do in respect of the insurance whatever he might have done in respect of a contract within the meaning of subsection 1. After the death of the person who effected the insurance, the written consent may be given by a parent or duly appointed guardian of the minor if the insurance was effected by a parent, and, in other cases, by the personal representative of the person who effected the insurance. 1924, c. 50, s. 132.

Sums insur-
able at age
less than ten.

139.—(1) No insurer shall insure the life of a child under ten years of age in any sum, or pay on the death of a child under ten years of age any sum, which alone or together with any sum payable on the death of the child by any other insurer exceeds the following sums respectively:

\$20 if the child dies under the age of	1 year
50 “ “ “	2 years
75 “ “ “	3 “
100 “ “ “	4 “
130 “ “ “	5 “
160 “ “ “	6 “
200 “ “ “	7 “
250 “ “ “	8 “
320 “ “ “	9 “
400 “ “ “	10 “

Where
insurance
excessive.

(2) Where the age of the child at the date of the contract is less than ten years, and the insurer knowingly or without sufficient inquiry enters into any contract prohibited by this section, the premiums paid thereunder shall be recoverable from the insurer by the person paying the same, together with interest thereon at six per centum per annum.

Scale of
benefits to
appear on
circular, etc.

(3) Every insurer which undertakes or effects insurance on the lives of children under ten years of age shall print the scale of benefits provided in subsection 1 in conspicuous type upon every circular or advertisement soliciting, and upon every policy of, such insurance.

(4) An insurer which knowingly contravenes the provisions of subsection 1 or 3 shall be guilty of an offence and liable to the penalties provided by law for the illegal conduct of insurance business in the Province. Penalty.

(5) Nothing in subsections 1 and 3 shall apply to such contracts as were in force on the 14th day of April, 1892, or to a contract where the insured has a pecuniary interest in the life, or which limits the payment on the death of the child before attaining ten years of age to the premiums that have been paid, with interest at the rate provided for in the contract. 1924, c. 50, s. 133. Proviso.

Beneficiaries.

140.—(1) Beneficiaries for value are beneficiaries who have given valuable consideration other than marriage and who are expressly stated to be, or described as, beneficiaries for value in the policy or in an endorsement thereon or in a subsequent declaration signed by the insured. Beneficiaries for value.

(2) Preferred beneficiaries are the husband, wife, children, grandchildren, father and mother of the person whose life is insured. Preferred beneficiaries.

(3) Ordinary beneficiaries are beneficiaries who are not preferred beneficiaries, beneficiaries for value or assignees for value. 1924, c. 50, s. 134. Ordinary beneficiaries.

141. A beneficiary for value and the assignee for value of a policy shall have a vested interest in the policy, and nothing in this Act shall enable the insured to restrict, interfere with or defeat the rights of such beneficiary or assignee. 1924, c. 50, s. 135. Right of beneficiary for value or assignee for value.

142.—(1) Subject to the rights of beneficiaries for value and assignees for value and to the provisions of this Act relating to preferred beneficiaries, the insured may designate the beneficiary by the contract or by a declaration, and may from time to time by any declaration appoint, appropriate or apportion the insurance money, or alter or revoke any prior designation, appointment, appropriation or apportionment, or substitute new beneficiaries, or divert the insurance money wholly or in part to himself or his estate, and may surrender the contract to the insurer, borrow from the insurer upon the security of the contract, receive the surplus or profits for his own benefit, and otherwise deal with the contract as may be agreed upon between him and the insurer. Power of insured to deal with contract.

(2) Where the declaration is made by a last will, the declaration as against a subsequent declaration shall be deemed to have been made at the date of the will and not at the death of the testator. A declaration contained in an unrevoked Declaration by will.

instrument purporting to be a will shall be effective as a declaration notwithstanding that the instrument is invalid as a testamentary document. 1924, c. 50, s. 136.

When beneficiaries share equally.

143. Where two or more beneficiaries are designated otherwise than alternatively, but no apportionment is made, they shall share equally. ~1924, c. 50, s. 137.

Death of ordinary beneficiary before maturity of contract.

144. Where there are several ordinary beneficiaries, if one or more of them die before the maturity of the contract and no apportionment or other disposition is subsequently made by the insured, and it is not otherwise provided for in the policy or prior declaration, the share of the deceased beneficiary or beneficiaries shall be payable to the surviving beneficiary or beneficiaries, in equal shares, if more than one, and if all the beneficiaries or the sole beneficiary die before the maturity of the contract and no other disposition is made by the insured and it is not otherwise provided for in the contract or prior declaration, the insurance money shall be payable to the insured or his estate. 1924, c. 50, s. 138.

Trust in favour of preferred beneficiaries.

145.—(1) Where the insured, in pursuance of the provisions of section 142, designates as beneficiary or beneficiaries, a member or members of the class of preferred beneficiaries, a trust is created in favour of the designated beneficiary or beneficiaries, and, so long as any of the class of preferred beneficiaries remains, the insurance money, or such part thereof as is or has been apportioned to a preferred beneficiary, shall not, except as otherwise provided in this Act, be subject to the control of the insured, or of his creditors, or form part of the estate of the insured.

Proviso: Vested rights of beneficiaries for value, etc.

(2) The provisions of subsection 1 are subject to any vested rights of beneficiaries for value and assignees for value, to the provisions hereinafter contained relating to preferred beneficiaries, and to any contingency or limitation stated in the instrument by which the insured first designates the preferred beneficiary or beneficiaries; provided, that no provision in such instrument reserving to the insured the right to revoke or abridge the interest of a preferred beneficiary shall be effective so as to enable the insured to revoke or abridge such interest in favour of any person not in the class of preferred beneficiaries.

Right of insured to designate alternative beneficiary.

(3) The insured, in the instrument by which he designates the preferred beneficiary or beneficiaries, may provide that if a designated beneficiary is not living at the maturity of the contract, the insurance money or any part thereof that would have been payable to such designated beneficiary, if living, shall be payable to the insured, to his estate, or to any other person, whether or not such person is a member of the class of preferred beneficiaries, or may provide that a designated

beneficiary shall be entitled only to the income derived from the insurance money or any part thereof for life or for a term of years or otherwise. 1924, c. 50, s. 139.

146. Notwithstanding the designation of a preferred beneficiary or beneficiaries, the insured may subsequently exercise the powers conferred by section 142 so as to restrict, limit, extend or transfer the benefits of the contract to any one or more of the class of preferred beneficiaries to the exclusion of any or all others of the class, or wholly or partly to one or more for life or any other term or subject to any limitation or contingency, with remainder to any other or others of the class. 1924, c. 50, s. 140.

Insured may vary benefit or beneficiary.

147.—(1) Subject to the provisions of the next following section, where by the policy or by a subsequent declaration the insurance money or any part of it is made payable to or for the benefit of the wife of the person whose life is insured, his future wife, his wife and children or his future wife and children generally, or his children generally, the word "wife" means the wife living at the maturity of the contract, and the word "children" includes all the children of the person whose life is insured living at the maturity of the contract as well as the issue living at the maturity of the contract of any child of his who predeceases him, such issue taking by representation.

Meaning of "wife" and "children."

(2) The provisions of subsection 1 shall *mutatis mutandis* apply to insurance effected by a woman on her life where the insurance money or any part of it is made payable to or for the benefit of her husband or future husband, her husband and children or future husband and children generally, or her children generally.

Application.

(3) Subsections 1 and 2 shall not apply where the beneficiary or beneficiaries is or are designated by name, or otherwise definitely indicated. 1924, c. 50, s. 141.

148.—(1) In case of the death, before the maturity of the contract, of any preferred beneficiary, whether designated by name or not, his share may be dealt with or disposed of by the insured under section 142 to the same extent as if the deceased beneficiary had not been a preferred beneficiary.

Disposal of share of deceased preferred beneficiary.

(2) Subject to subsection 1 and to any provision in the policy or a declaration, the share of a preferred beneficiary who dies before the maturity of the contract shall be payable as follows:—

- (a) If the deceased beneficiary was a child of the person whose life is insured, and has left issue surviving at the maturity of the contract, his share, and any share to which he would have been entitled if he had survived, shall be payable to such issue in equal shares.

- (b) If there is no person entitled under clause *a*, the share of such deceased beneficiary shall be payable to the surviving designated preferred beneficiary or beneficiaries in equal shares.
- (c) If there is no person entitled under clauses *a* and *b*, the share of such deceased beneficiary shall be payable in equal shares to the wife or husband and the child or children of the person whose life is insured living at the maturity of the contract, and the issue then living of any deceased child of the person whose life is insured, such issue taking in equal shares the share to which his or their parent would have been entitled if living.
- (d) If there is no person entitled under clauses *a*, *b* and *c*, the share of such deceased beneficiary shall be payable to the insured, or his estate. 1924, c. 50, s. 142.

Divorce.

149.—(1) Where the wife or husband of the person whose life is insured is designated as beneficiary, and is subsequently divorced, all interest of the beneficiary under the policy shall pass to the insured or his estate, unless such beneficiary is a beneficiary for value, or an assignee for value.

When deemed lawfully divorced.

(2) Where a divorce has been granted on the application of the beneficiary, the beneficiary shall be estopped from denying the validity of the divorce for the purpose of this section.

Notice of divorce.

(3) Until the insurer receives notice in writing of the Act of Parliament, judgment, decree or order granting the divorce, it may deal with the insurance money in the same manner and with the same effect as if no divorce had been granted, and before paying the insurance money, the insurer shall be entitled to receive the original judgment, order or decree or a duly verified copy thereof, or a duly verified copy of the Act of Parliament, or a copy thereof printed by the King's printer, as the case may be.

Recovery.

(4) Nothing in subsection 3 shall affect the right of any person entitled to payment by virtue of such divorce to recover from any person to whom payment is made by the insurer. 1924, c. 50, s. 143.

Wife or husband of insured living apart.

150. Where the wife or husband of the person whose life is insured is designated as beneficiary, and it appears, in the case of the wife, that she is living apart from her husband in circumstances disentitling her to alimony, or in the case of the husband, that he is living apart from his wife in circumstances disentitling him to an order for restitution of conjugal rights, and that there is no other member of the class of preferred beneficiaries whom the insured may designate as beneficiary in place of the designated beneficiary, the court

may, on the application of the insured, and on such terms as may seem fit, declare the designated beneficiary disentitled to claim the benefit of the provisions of this Part relating to preferred beneficiaries, and the insured may then deal with the policy as provided by section 142. 1924, c. 50, s. 144.

151.—(1) Where a preferred beneficiary is designated, the insured may surrender the contract to the insurer and accept in lieu thereof any paid-up or extended insurance provided by the contract in favour of the preferred beneficiary. Surrender of or borrowing on contract where preferred beneficiary.

(2) Where a preferred beneficiary is designated, the insured may, from time to time, borrow from the insurer on the security of the contract, such sums as may be necessary and are applied to keep it in force, and the sums so borrowed, with such interest as may be agreed on, shall be a first charge on the contract and the insurance money. 1924, c. 50, s. 145.

152.—(1) Notwithstanding the designation of a preferred beneficiary, any person who has effected a participating contract may either receive the surplus or profits for his own benefit or may, from time to time, either apply the same in payment or reduction of premiums, or direct them to be added to the insurance money; and the share of each beneficiary shall, in the last case, be proportionately increased. Disposal of surplus or profits where preferred beneficiary.

(2) The insurer shall not be obliged to pay or apply such surplus or profits in any manner contrary to the stipulations in the contract. 1924, c. 50, s. 146. Obligation of insurer.

153.—(1) Where all the designated preferred beneficiaries are of full age, they and the insured may surrender the contract or may assign or dispose of the same either absolutely or by way of security, to the insurer, the insured or any other person, but notwithstanding anything herein contained the insured may exercise the borrowing powers conferred by section 151 without the concurrence of any beneficiary. Dealing with contract with consent of beneficiary.

(2) Where the beneficiaries, whether designated by name or not, include the wife or children or grandchildren, it shall be sufficient, so far as their interests are concerned, if all then living are of full age and join in the surrender, assignment or disposal. 1924, c. 50, s. 147.

154. Where by a contract a person is to become entitled to insurance money only in the event of the death of another person named as a beneficiary it shall not be necessary for such first mentioned person to join in any surrender, assignment or disposal of the contract. 1924, c. 50, s. 148. Consent of contingent beneficiary not necessary.

155.—(1) Where the insurance money is payable in instalments and the contract, or a subsequent instrument in writing signed by the insured and delivered to the insurer, Dealing with insurance money payable in instalments.

expressly provides that the beneficiary shall not have the right to commute the instalments or to alienate or assign his interest therein, the insurer shall not commute the instalments or pay them to any person other than the beneficiary, and the instalments shall not, in the hands of the insurer, be subject to legal process except in an action to recover for necessities supplied to the beneficiary or his or her infant children.

(2) Notwithstanding anything contained in subsection 1,

- (a) the insured may, by an instrument in writing signed by him and delivered to the insurer, declare that the beneficiary shall have the right to commute, or alienate or assign, as the case may be;
- (b) the Court may, upon the application of the insurer or the beneficiary, upon at least ten days' notice, declare that in view of special circumstances the beneficiary shall have the right to commute, or alienate or assign, as the case may be;
- (c) after the death of the beneficiary his personal representatives may commute any instalments payable to them.

(3) In this section the word "instalments" includes insurance money or any part thereof held by the insurer under the provisions of the next following section. 1924, c. 50, s. 149.

Insurer holding insurance money after maturity of contract.

156. Subject to the provisions of this Part relating to preferred beneficiaries, where it is so expressly provided in the contract or by any subsequent agreement in writing, the insurer may hold the insurance money or any part thereof after maturity of the contract subject to the order of the beneficiary, or upon such trusts or other agreements for the benefit of the beneficiary as may be provided in the contract or agreement, allowing and paying to the person entitled to such insurance money, or any part thereof, interest thereon at a rate not less than that specified in the contract or agreement for the term during which the insurer retains such insurance money or any part thereof. 1924, c. 50, s. 150.

Payments by insurer without notice of change in title to insurance money.

157.—(1) Until the insurer receives notice in writing of the making of an order declaring a beneficiary disentitled to insurance money, or of any instrument in writing affecting the insurance money or any part thereof or of the appointment or the revocation of the appointment of a trustee, it may make any payment which would have been lawful and valid except for such order, instrument in writing, appointment or revocation of appointment, and before making any payment in pursuance or under the authority of such order, instrument in writing, appointment or revocation of appointment, it shall be entitled to receive the original or a true copy thereof.

(2) Nothing in this section shall affect the right of any person entitled to payment by virtue of such order, instrument in writing, appointment or revocation of appointment, to recover from any person to whom payment has been made by the insurer. 1924, c. 50, s. 151.

Proof of Claim and Payment.

158.—(1) The insurer shall be entitled to reasonably sufficient proof in writing verified by affidavit or statutory declaration of the maturity of the contract, of the age of the person whose life is insured and of the right of the claimant to receive payment of the insurance money. Proof of age of insured and right of claimant.

(2) Where the insurance money or part thereof is payable to or for the benefit of minors, the insurer shall be entitled to reasonably sufficient proof of the names and ages of the minors. Proof of names and ages of minors. 1924, c. 50, s. 152.

159.—(1) Insurance money which is expressed to be payable at the maturity of the contract shall be payable thirty days after reasonably sufficient proof has been furnished to the insurer of the maturity of the contract, of the age of the person whose life is insured, and of the right of the claimant to receive payment. Time of payment.

(2) Insurance money shall be payable in the Province in lawful money of Canada. How payable. 1924, c. 50, s. 153.

160.—(1) Where the insurer does not admit the sufficiency of the proof furnished by the claimant of the maturity of the contract, or of the age of the person whose life is insured, or of the right of the claimant to receive payment of the insurance money, and where there is no other question in issue, except a question under subsection 2, the insurer or the claimant may, before or after action brought, upon at least ten days' notice, apply to the Court for a declaration as to the sufficiency of the proof furnished, and the Court may direct what further evidence of the age of the person whose life is insured shall be furnished, or, in special circumstances, may dispense with further evidence of the age of the person whose life is insured. Application to court for declaration as to sufficiency of proofs.

(2) Where the claimant alleges that the person whose life is insured is presumed to be dead by reason of his not having been heard of for seven years, and where there is no other question in issue except a question under subsection 1, the insurer may, before or after action brought, upon at least ten days' notice, apply to the Court for a declaration as to the presumption of death. Obtaining declaration of presumption of death.

(3) If the Court finds that the proof of the maturity of the contract or of the age of the person whose life is insured or of the right of the claimant to receive payment is sufficient, or Order of judge.

that a presumption of death has been established, or makes an order directing what further evidence of the age of the person whose life is insured shall be furnished or dispensing with further evidence of the age of the person whose life is insured, the finding or order of the Court shall, subject to appeal, be conclusive and binding upon the parties to the application, and the Court may make such order as to the payment of the insurance money and as to the costs as to it may seem just.

Effect of
payment.

(4) The payment by the insurer in accordance with the order shall discharge it from liability in respect of such payment.

Powers of
judge.

(5) If the Court does not find that the proof of the maturity of the contract, of the age of the person whose life is insured, or of the right of the claimant to receive payment is sufficient, or that the presumption of death is established, the Court may order that the question or questions in issue be decided in an action brought or to be brought, or may make such other order as to it seems just as to further proof to be furnished by the claimant, as to publication of advertisements, as to further inquiry, and as to costs, or otherwise.

Stay of
proceedings.

(6) Unless otherwise ordered by the Court, the application shall operate as a stay of any pending action with respect to the insurance money. 1924, c. 50, s. 154.

Presumption
where
insured and
beneficiary
perish in
same
disaster.

161. Where the person whose life is insured and any one or more of the beneficiaries perish in the same disaster, it shall be *prima facie* presumed that the beneficiary or beneficiaries died first. 1924, c. 50, s. 155.

Miscellaneous.

Limitation
of actions.

162.—(1) Subject to the following subsections of this section, any action or proceeding against the insurer for the recovery of insurance money shall be commenced within one year next after the furnishing of reasonably sufficient proof of the maturity of the contract and of the right of the claimant to receive payment, or within six years next after the maturity of the contract, whichever period shall first expire, but not afterwards.

(2) Where an order has been made declaring that death is presumed from the fact that the person whose life is insured has not been heard of for seven years, an action or proceeding shall be commenced within one year and six months from the date of the order, but not afterwards.

(3) Where the death of the person whose life is insured is unknown to the person entitled to claim under the contract, an action or proceeding may be commenced within the prescribed period or within one year and six months after the death becomes known to him.

(4) Where an action or proceeding is prematurely brought, the plaintiff may commence a new action or proceeding at any time within the prescribed period or within six months after the final determination of the first action or proceeding. 1924, c. 50, s. 156.

163.—(1) The powers conferred upon the insured by this Part with regard to the designation or appointment of a beneficiary or beneficiaries, and the alteration or revocation of such designation or appointment, and the apportionment or reapportionment of insurance money between or among beneficiaries, shall include power from time to time to appoint a trustee or trustees for any beneficiary or beneficiaries, to revoke such appointment or alter its terms, to appoint a new trustee or trustees, or to make provision for the appointment of a new trustee or trustees. Appointment of trustees.

(2) The appointment of a trustee or trustees for any beneficiary shall not have the effect of taking away from the court or the insured any power of depriving the beneficiary of the benefit of the insurance money which the court or the insured would have under this Act if such beneficiary had been designated as beneficiary without the appointment of a trustee.

(3) Payment made to the trustee or trustees appointed as hereinbefore provided shall discharge the insurer. 1924, c. 50, s. 157.

164.—(1) Where no trustee is appointed to receive the shares to which minors or other persons who are under disability are entitled, or where a trustee is named, but refuses or neglects to act, the shares of such minors or other persons under disability may be paid to a guardian or tutor or trustee of such minors or to a curator, committee or trustee of such other persons under disability duly appointed under the law of this Province. Payment of shares of infants, lunatics, etc.

(2) Where insurance money not exceeding two thousand dollars is payable to the husband and children or to the wife and children, or to the children of the person whose life is insured, and one or more of the children are minors, the court may, if the wife is the mother of such minors, appoint her their guardian, or if the husband is the father of such minors, appoint him their guardian, with or without security, and the insurance money may be paid to him or her as guardian.

(3) Where it appears that a guardian, tutor, curator, committee or trustee of minors or other beneficiaries under disability has been appointed in a foreign jurisdiction, and that the minors or other beneficiaries are resident within that jurisdiction, the court may authorize payment of the insurance money to the guardian, tutor, curator, committee or trustee with or without security in the Province. 1924, c. 50, s. 158.

Insurer
may obtain
order for
payment
into court.

165.—(1) Where the insurer admits liability for the insurance money or any part thereof, and,

- (a) there are adverse claimants; or,
- (b) the place of abode of a person entitled is unknown; or,
- (c) there is no person capable of giving a valid discharge;

the insurer may, at any time after the expiration of one month from the maturity of the contract, apply to the court for an order for payment of the money into court.

(2) Where the insurer admits liability for the insurance money or any part thereof payable to a minor and there is no person capable of giving a valid discharge therefor, the insurer may at any time after the expiration of one month from the maturity of the contract, pay such money, less the costs mentioned in subsection 3, into court to the credit of the minor.

(3) The insurer may retain out of the insurance money for costs ten dollars if the amount does not exceed one thousand dollars, and fifteen dollars in other cases, and payment of the remainder into court shall discharge the insurer.

(4) No order shall be necessary for payment into court under subsection 2, but the accountant or other proper officer shall receive the money upon the insurer filing with him an affidavit showing the amount payable and the name, date of birth and residence of the minor, and upon such payment being made the insurer shall forthwith notify the Official Guardian of infants and deliver to him a copy of the affidavit. 1924, c. 50, s. 159.

On two
months
default
court may
make order.

166. Where the insurer does not within two months after due proof of the claim, pay the insurance money to some person competent to receive the same under this Part or into court, the court may, upon application of any person, order that the insurance money, or any part thereof, be paid into court or may make such other order as to the distribution of such money as to the court may seem just, and payment made in accordance with such order shall be a sufficient discharge to the insurer. 1924, c. 50, s. 160.

Costs.

167. The court may order the costs incurred upon or in connection with any application or order made under section 165 or 166 to be paid out of the insurance money or by the insurer or the applicant or otherwise as may seem just. 1924, c. 50, s. 161.

Construction
of Part.

168. This Part shall be so interpreted and construed as to effect its general purpose of making uniform the law of those provinces which enact it. 1924, c. 50, s. 162.

PART VI.

AUTOMOBILE INSURANCE.

169. This Part shall apply to automobile insurance and Application. to any insurer carrying on the business of automobile insurance in Ontario. 1924, c. 50, s. 163.

170.—(1) No contract shall be made for a term exceed- Term of contract. ing one year, but any contract may be renewed by the delivery of a new policy, a renewal receipt or a new premium note. 1924, c. 50, s. 164 (1); 1926, c. 49, s. 16.

(2) Where only the amount of the insurance, the rate Renewal. of premium or the method of rating in a contract is changed, a continuance of the insurance for a further term shall be deemed a renewal of the contract within the meaning of subsection 1. 1924, c. 50, s. 164 (2).

171.—(1) No insurer shall make any contract for a Written application required. period exceeding fourteen days without a written application therefor, signed by the applicant or his agent, duly authorized in writing, and no statement of the applicant shall be used in defence of a claim under any contract unless it is contained in such a written and signed application.

(2) In the preceding subsection the expression “agent” shall be deemed to exclude an automobile finance or acceptance corporation, an automobile dealer, an insurance agent or broker, and any officer or employee of such corporation, dealer, agent or broker.

(3) Every written application shall set forth the name, address and occupation or business of the applicant, the description of the automobile, its purchase price to the applicant, and whether fully paid or not, whether purchased new or otherwise, particulars of any mortgage, lien or other encumbrance thereon, the place where the automobile is and will be usually kept, the purpose for which and the locality where it is and will be chiefly used, the fact of any accident in which any automobile owned or operated by the applicant has within the last three years preceding the application been involved, particulars of any claim made against or by the applicant in respect of the ownership or operation of any automobile within such period, whether any insurer has cancelled any automobile policy of the applicant or refused automobile insurance to the applicant, and such further information as the insurer may require.

(4) Where the particulars required by subsection 3 are in the opinion of the Superintendent inapplicable to any special form of contract, the Superintendent may approve a modified form of application appropriate to the nature of the contract.

(5) Upon every written application there shall be printed or stamped in conspicuous type, not less in size than ten-point, and in red ink, the following words:—

“If the applicant falsely describes the property to the prejudice of the insurer or knowingly misrepresents or conceals or omits to communicate any circumstances required by this application to be made known to the insurer, the contract shall be void as to the property insured or risk undertaken in respect of which the misrepresentation or omission is made.”

(6) A copy of the application or such part thereof as is material to the contract shall be endorsed upon or attached to the policy when issued by the insurer.

(7) This section shall not apply to the renewal of a contract under section 170. 1926, c. 49, s. 17.

Amendment
of contract.

172. Where it is proposed to change the subject matter of the insurance by substitution or addition of one or more automobiles, the contract may be amended by an endorsement to that effect on the existing policy, but no contract shall be so amended without a written application containing such particulars in reference to the new subject matter as would be required by section 171 in an application for a contract and signed in accordance with that section. 1927, c. 59, s. 6.

Contents of
policy.

173. Every policy shall contain the name and address of the insurer, the name and address of the insured, the name of the person or persons to whom the insurance money is payable, if other than the insured, the premium for the insurance, the perils or risks insured against, the indemnity for which the insurer may become liable, the event on the happening of which such liability is to accrue, and the term of the insurance. 1924, c. 50, s. 166.

Limitation
of risk.

174. The contract may provide for the exclusion, from the risks insured against, of losses arising from any hazard or class of hazard expressly stated in the policy. 1924, c. 50, s. 167.

Statutory
conditions.

175. The conditions set forth in this section shall, subject to the provisions of sections 176 and 177, be deemed to be part of every contract of automobile insurance in force in Ontario and the said conditions shall be printed on every policy under the heading “Statutory Conditions.” 1924, c. 50, s. 168, *part*; 1925, c. 54, s. 18.

STATUTORY CONDITIONS.

Material Facts.

1. All statements made by the insured upon the application for this policy shall, in the absence of fraud, be deemed representations and not warranties, and no such statement shall be used in defence of a claim under this policy unless it is contained in the written application for the policy and unless a copy of the application, or such part thereof as is material to the contract, is endorsed upon or attached to the policy when issued.

Misrepresentation.

2. If any person applying for insurance falsely describes the property to the prejudice of the insurer, or knowingly misrepresents or conceals or omits to communicate any circumstance which is required by the terms of the written application to be made known to the insurer, the contract shall be void as to the property or risk undertaken in respect to which the misrepresentation or omission is made.

Material Change in Risk.

3. Any change material to the risk, and within the control and knowledge of the insured, shall void the policy as to the part affected thereby, unless the change is promptly notified in writing to the insurer or its local agent; and the insurer when so notified may return the unearned portion, if any, of the premium paid and cancel the policy, or may notify the insured in writing that, if he desires the policy to continue in force, he must, within fifteen days of the receipt of the notice, pay to the insurer an additional premium, and in default of such payment the policy shall no longer be in force and the insurer shall return the unearned portion, if any, of the premium paid.

Form of Contract.

4. After a written application for insurance, it shall be deemed that any policy sent to the insured is intended to be in accordance with the terms of the application, unless the insurer points out by registered letter addressed to the insured the particulars wherein it differs from the application, in which case the insured may, within one week from the receipt of the notification, reject the policy.

Risks Not Covered.

5. The insurer shall not be liable under this policy while the automobile, with the knowledge, consent or connivance of the insured, is being driven by a person under the age limit fixed by law, or, in any event, under the age of 16 years, or by an intoxicated person.

Risks Not Covered Except by Permission.

6. (1) Unless otherwise specifically stated in the policy, or endorsed thereon, the insurer shall not be liable;
- (a) for loss or damage caused by earthquake, invasion, insurrection, riot, civil commotion, military or usurped power;
- (b) if the interest of the insured in the automobile is other than unconditional and sole ownership;
- (c) if the automobile is or becomes encumbered by any lien or mortgage;
- (d) if there is any material change in the nature of the insurable interest of the insured in the automobile, by sale, assignment or otherwise, except through change of title by succession, or by death, or by an authorized assignment under *The Bankruptcy Act*;
- (e) if at the time a loss, damage or accident occurs there is any other insurance, of the same interest, whether valid or not, covering said loss or damage, or any portion thereof, which would have been in force if this insurance had not been effected;

- (2) If permission has been given for other insurance under paragraph (c) of this condition, the insurer will be liable only for his rateable proportion of such loss or damage.

Inspection.

7. The insurer shall be permitted at all reasonable times to inspect the automobile and its equipment.

Accidents to the Persons and Property of Others.

8. (1) Upon the occurrence of an accident involving bodily injuries or death, or damage to property of others, the insured shall promptly give written notice thereof to the insurer, with the fullest information obtainable at the time. The insured shall give like notice, with full particulars of any claim made on account of such accident, and every writ, letter, document or advice received by the insured from or on behalf of any claimant shall be immediately forwarded to the insurer.

(2) The insured shall not voluntarily assume any liability or settle any claim except at his own cost. The insured shall not interfere in any negotiations for settlement or in any legal proceeding, but, whenever requested by the insurer, shall aid in securing information and evidence and the attendance of any witnesses, and shall co-operate with the insurer, except in a pecuniary way, in all matters which the insurer deems necessary in the defence of any action or proceeding or in the prosecution of any appeal.

(3) No action to recover the amount of a claim under this policy shall lie against the insurer unless the foregoing requirements are complied with and such action is brought after the amount of the loss has been ascertained either by a judgment against the insured after trial of the issue or by agreement between the parties with the written consent of the insurer, and no such action shall lie in either event unless brought within one year thereafter.

Loss or Damage to the Automobile.

9. (1) Upon the occurrence of any loss of or damage to the insured automobile, the insured shall, if such loss or damage is covered by this policy:

(a) forthwith give notice thereof, in writing, to the insurer, with fullest information obtainable at the time, and shall, at the expense of the insurer, and as far as reasonably possible, protect the automobile from further loss or damage, and any such further loss or damage accruing directly or indirectly from a failure to protect shall not be recoverable hereunder. No repairs shall be undertaken or any physical evidence of the loss or damage removed without the written consent of the insurer, except such repairs as are immediately necessary for the protection of the automobile from further loss or damage; or until the insurer has had a reasonable time to make the examination provided for in subsection (2) of this condition;

(b) deliver to the insurer within ninety days of the date of the loss or damage a statutory declaration stating the place, time and cause of the loss or damage, so far as the insured knows or believes, the interest of the insured and of all others in the automobile, the sound value thereof, the amount of loss or damage thereto, all encumbrances thereon, and all other insurance, whether valid or not, covering the automobile, and that the loss or damage did not occur through any wilful act or neglect, procurement, means or connivance of the insured.

(2) After any loss or damage to an insured automobile, the insurer shall have right of access to an examination of such automobile by accredited agents of the insurer sufficient to enable such agents to ascertain the amount of the damage sustained.

(3) The insured shall submit to examination under oath, and shall produce for examination, at such reasonable place as is designated by the insurer or its representative, all books of account, bills,

invoices and other vouchers in his possession or control which relate to the matters in question, and shall permit extracts and copies thereof to be made.

(4) The insurer shall not be liable beyond the actual cash value of the automobile at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to such actual cash value with proper deduction for depreciation, however caused, and shall in no event exceed what it would cost to repair or replace the automobile or any part thereof with material of like kind and quality; provided that, in the event of any part of the automobile being obsolete and out of stock, the liability of the insurer in respect thereof shall be limited to the value of such part at the time of loss or damage not exceeding the maker's last list price; the ascertainment or estimate of such loss or damage shall be made by the insured and the insurer, or, if they disagree, then by appraisers, as hereunder provided.

(5) Except where an appraisal has been had, the insurer, instead of making payment, may within a reasonable time repair, rebuild or replace the property damaged or lost with other of like kind and quality, giving written notice of its intention so to do within seven days after receipt of the proofs of loss; but there can be no abandonment of the automobile to the insurer without its consent. In the event of the insurer exercising such option, the salvage, if any, shall revert to it.

(6) In the event of disagreement as to the nature and extent of the repairs and replacements required, or as to their adequacy, if effected, or as to the amount payable in respect of any loss or damage, such questions shall be determined by appraisers before recovery can be had hereunder, whether the right to recover on the policy is disputed or not, and independently of all other questions. The insured and the insurer shall each select one appraiser, and the two so chosen shall then select a disinterested umpire. Thereafter the two appraisers together shall estimate or appraise the loss or damage, stating separately sound value and damage, or determine the adequacy of such repairs or replacements, and, failing to agree, shall submit their differences to the umpire.

(7) In case either party fails to name an appraiser within seven clear days after being served with written notice so to do, or in case the appraisers fail to agree upon an umpire within fifteen days after their appointment, or in case an appraiser or umpire refuses to act or is incapable of acting, or dies, a Judge of a Superior, County or District Court having jurisdiction in the county or district in which the appraisal is to be made may appoint such appraiser or umpire on the application of the insured or of the insurer.

(8) An award in writing of the two appraisers, or of one appraiser and the umpire, shall determine the nature and extent or adequacy of the repairs and replacements, or the amount of such loss or damage.

(9) Each party shall pay the appraiser selected by him, and shall bear equally the other expenses of the appraisal and of the umpire.

(10) Neither the insurer nor the insured shall be deemed to have waived any provision or condition of this policy by any act relating to the appraisal, or to the delivery and completion of proofs of loss, or to the investigation or adjustment of the claim.

(11) The sum for which the insurer is liable hereunder for loss or damage shall be payable within sixty days after the proof of loss herein required has been received by the insurer, but if appraisal is demanded, then within fifteen days after the award has been made by the appraisers. No suit or action, however, may be brought for the recovery of any claim unless the insured has complied with the foregoing requirements, or unless such action is commenced within one year after the happening of the loss.

**Who May Give
Notice and
Proofs of Claim.**

10. Notice of claim may be given and proofs of claim may be made by the agent of the insured in case of the absence of the insured or in case of inability of the insured to give the notice or make the proof, such absence or inability being satisfactorily accounted for, or in the like case, or if the insured refuses to do so, by a person to whom any part of the insurance money is payable.

Fraud.

11. Any fraud or wilfully false statement made under oath or in a declaration in relation to any of the above particulars shall vitiate the claim of the person making the declaration in any matter affected by such fraud or false statement.

Subrogation.

12. The insurer on paying the loss shall be subrogated to the extent of such payment to all right of recovery against any third party, and on such payment or on assuming liability therefor may require from the insured a transfer of his rights against such third party, and the insured shall execute all documents properly required by the insurer to secure to it such rights.

Cancellation.

13.—(1) This policy may be cancelled at any time at the request of the insured, and the insurer shall, upon surrender of the policy, refund the excess of paid premium above the customary short rate premium for the time the policy has been in force.

(2) This policy may be cancelled at any time by the insurer giving to the insured fifteen days' notice in writing of cancellation by registered mail, or five days' notice of cancellation personally delivered, and refunding the excess of paid premium beyond the *pro rata* premium for the expired time. Repayment of excess premiums may be made by money, post office order, postal note or cheque. Such repayment shall accompany the notice, and in such case the fifteen days above mentioned shall commence to run from the day following the receipt of the registered letter at the post office to which it is addressed.

Waiver.

14. No condition or provision of this policy, either in whole or in part, shall be deemed to have been waived or altered by the insurer, unless the waiver is clearly expressed in writing signed by the manager of the insurer or its chief agent for Canada or this province.

Notice.

15. Any written notice to the insurer may be delivered at or sent by registered post to the chief agency or head office of the insurer in this province. Written notice may be given to the insured by letter personally delivered to him or by registered letter addressed to him at his last post office address notified to the insurer, or, where no address is notified and the address is not known, addressed to him at the post office of the agency, if any, from which the application was received.

Conditions
8 and 9 may
be omitted
in certain
cases.

176.—(1) If the policy does not insure against accident to persons or damage to property of others than the insured, condition number 8 may be omitted from the policy.

(2) If the policy does not insure against loss or damage to the insured automobile, condition number 9 may be omitted from the policy.

(3) If a condition is omitted pursuant to this section there shall be inserted, after the Condition number, the following words, within brackets, "[*This Condition is not applicable to this policy and is omitted pursuant to statute*]." 1924, c. 50, s. 169.

177.—(1) If an insurer desires to vary, omit or add to the automobile statutory conditions or any of them, except as provided in the preceding section, there shall be printed in conspicuous type, not less in size than ten point, and in red ink, immediately after such conditions, the proposed variations or additions or a reference to the omissions with these introductory words:

“Variations in Conditions.”

“This policy is issued on the above statutory conditions with the following variations, omissions and additions, which are, by virtue of the law of this Province, in force so far only as they shall be held to be just and reasonable to be exacted by the insurer.” 1924, c. 50, s. 170 (1); 1925, c. 54, s. 19.

(2) No variation, omission or addition shall be binding on the insured unless the foregoing provisions of this section have been complied with; and any variation, omission or addition shall be so binding only in so far as it is held by the court before which a question relating thereto is tried, to be just and reasonable.

(3) Where permission is given in the statutory conditions for extension of the insurance to additional risks or coverage by the use, in the statutory conditions, of the words “unless otherwise specifically stated in the policy,” or words to the like effect, such extension expressly made in the policy shall not be deemed to be a variation of the statutory conditions within the meaning of this section. 1924, c. 50, s. 170 (2, 3).

178. No red ink shall be used on the face of a policy except the name, address and emblem of the insurer, and the policy number and for the purposes mentioned in this Act. 1924, c. 50, s. 171.

179. In any case where there has been imperfect compliance with a statutory condition as to the proof of loss to be given by the insured, or as to any matter or thing to be done or omitted by the insured after the maturity of the contract, and a consequent forfeiture or avoidance of the insurance, in whole or in part, and the court deems it inequitable that the insurance should be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as it may deem just. 1924, c. 50, s. 172.

180.—(1) A policy may contain a partial payment of loss clause to the effect that the insurer in the event of loss shall pay only an agreed proportion of any loss which may be sustained or the amount of the loss after deduction of a sum

specified in the policy, in either case not exceeding the amount of the insurance, in which case there shall be printed or stamped upon the face of the policy in conspicuous type in red ink, the words: "This policy contains a partial payment of loss clause."

Clause not to be deemed an addition or variation.

(2) Such partial payment of loss clause shall not be deemed an addition to the statutory conditions or be subject to the provisions of section 177. 1924, c. 50, s. 173.

Rights of insured.

181. Any act or omission of the insurer resulting in imperfect compliance with any of the provisions of this Part shall not render the contract invalid as against the insured. 1924, c. 50, s. 174.

Coverage under fire policy.

182. Notwithstanding anything in this Part contained, an automobile may be insured under a fire insurance policy against loss or damage by fire as provided in subsection 3 of section 95, and in such case the provisions of this Part shall not apply. 1924, c. 50, s. 175; 1926, c. 49, s. 18.

Prohibition of action before award of appraisers.

183. Where by the statutory conditions of an automobile insurance policy the holding of an appraisal is provided for in the event of a dispute as to the amount of the loss or the adequacy of the repairs under the policy, no action shall be brought to recover the amount secured by the policy if the amount of the loss or the adequacy of the repairs is in dispute, until the award of the appraisers has been rendered in accordance therewith, and in any such action the award of the appraisers shall be conclusive as to the amount of the loss, or the adequacy of the repairs. 1924, c. 50, s. 176.

PART VII.

ACCIDENT AND SICKNESS INSURANCE.

Application.

184.—(1) This Part shall apply to accident and sickness insurance and to an insurer undertaking accident and sickness insurance in the Province but shall not apply to any fraternal society or to its contracts.

What rights may be insured against.

(2) Every insurer licensed for the transaction of accident or sickness insurance may, within the limits and subject to the restrictions prescribed by the license, insure or reinsure any person against accident, sickness or disability, total or partial, so long as the contingency insured against does not happen by design of the insured.

Application of Part V.

(3) Except where inconsistent with the provisions of this Part or with any statutory policy condition required to be inserted in contracts of accident and sickness insurance, the provisions of Part V relating to contracts of life insurance,

except subsection 2 of section 128 and section 129 shall apply *mutatis mutandis* to contracts of accident and sickness insurance. 1924, c. 50, s. 177.

185.—(1) Where the contract of insurance has been delivered it shall be as binding on the insurer as if the premium had been paid, although it has not in fact been paid, and although delivered by an officer or agent of the insurer who had not authority to deliver it.

Effect of delivery of policy or receipt for premium.

(2) The insurer may sue for the unpaid premium and may deduct the same from the amount for which he may become liable under the contract.

Right of insurer in respect of unpaid premium.

(3) Where the premium is paid by a cheque or a promissory note and the cheque is not paid on presentation or the promissory note at maturity the contract shall at the option of the insurer be voidable. 1924, c. 50, s. 178.

Where note or cheque for premium not paid.

186. In every contract of accident insurance, the event insured against shall include any bodily injury occasioned by external force or agency, and happening without the direct intent of the person injured, or as the indirect result of his intentional act, and no term, condition, stipulation, warranty or proviso of the contract, varying the obligation or liability of the insurer shall, as against the insured, have any force or validity, but the contract may provide for the exclusion from the risks insured against of accidents arising from any hazard or class of hazard expressly stated in the policy. 1924, c. 50, s. 179.

What accident includes.

187. The conditions set forth in this section shall be deemed, subject to the provisions of sections 188 to 192, to be part of every contract of accident and of sickness insurance in force in Ontario, and shall be printed on every policy hereafter issued under the heading "Statutory Conditions." 1924, c. 50, s. 180, *part*.

Statutory conditions.

STATUTORY CONDITIONS.

The Contract. 1. This policy, including the endorsements and attached papers, if any, contains the entire contract of insurance except as it may be modified by the insurer's classification of risks and premium rates as provided by condition 3.

Material facts. 2. All statements made by the insured upon the application for this policy shall, in the absence of fraud, be deemed representations and not warranties, and no such statement shall be used in defense of a claim under this policy unless it is contained in the written application for the policy and unless a copy of the application, or such part thereof as is material to the contract, is endorsed upon or attached to the policy when issued.

**Change to
more
hazardous
occupation.**

3. If a *bodily injury or any sickness insured* against happens to the insured while engaged temporarily or permanently in an occupation classified as more hazardous than that stated herein to be the occupation of the insured, the liability under this policy shall be limited to such amount as the premium paid would have purchased for the more hazardous occupation according to the limits, classification of risks and premium rates of the insurer last filed with the Superintendent of Insurance; provided that the performance of ordinary duties about his residence or while engaged in recreation shall not be regarded as a change of occupation by the insured.

**Change to
less
hazardous
occupation**

4. If the insured shall, at any time, change his occupation either temporarily or permanently to an occupation classified by the insurer as less hazardous than that stated in the policy to be the occupation of the insured, the insurer shall, upon written request of the insured and surrender of this policy, issue a policy for the unexpired term at the lower rate of premium applicable to such less hazardous occupation, and the insurer shall return to the insured the amount by which the unearned premium on the original policy exceeds the premium charge at such lower rate for the unexpired term.

**Commence-
ment of
contract.**

5. Unless otherwise specifically stated in this policy, the insurer is not liable for any loss occasioned by sickness contracted by the insured within fifteen days from noon, standard time, of the day on which the policy comes into force.

**Limited
liability of
insurer.**

6. If the *accident or sickness* benefits for loss of time secured hereunder, together with the *accident or sickness* benefits payable under other contracts of insurance upon the person of the insured, make up an aggregate indemnity in excess of the money value of the time of the insured, the insurer shall be liable only for such proportion of the benefits stated in this policy as the money value of the time of the insured bears to the aggregate of the benefits payable under all such contracts on the person of the insured, and the excess premium, if any, paid by the insured shall be returned to him by the insurer.

**Notice to
Insurer.**

7. Any written notice to the insurer may be delivered at or sent by registered post to the chief agency or head office of the insurer in the province or delivered or sent to any authorized agent of the insurer therein.

**Notice to
Insured.**

8. Any written notice may be given to the insured by letter personally delivered to him or by registered letter addressed to him at his last post office address notified to the insurer, or where not notified and the address is not known, addressed to him at the agency, if any, at which the application was received.

**Termination
by insurer.**

9. The insurance may be terminated by the insurer at any time by giving to the insured ten days' notice of cancellation by registered mail or five days' notice of cancellation personally delivered to the insured and refunding in either case the excess of paid premium beyond the *pro rata* premium for the expired time.

**Termination
by insured.**

10. The insurance may be terminated by the insured at any time by giving written notice of termination to the insurer, in which case the insurer shall, upon surrender of this policy, refund the excess of paid premium beyond the customary short rate for the expired time.

Repayment of excess premium.

11. In the case of termination of the insurance by the insurer, repayment of the excess premium may be made in money, by post office order, postal note or cheque payable at par, certified by a chartered bank doing business in the province. If the notice is given by registered letter, such repayment shall accompany the notice, and, in such case, the ten days mentioned in condition 9 shall commence to run from the day following the receipt of a registered letter at the post office to which it is addressed.

Notice and proof of claim.

12. Any person entitled to make a claim under this policy shall:

- (a) give notice of claim in writing to the insurer not later than thirty days *from the date of the accident or from the date of the commencement of disability from sickness*; provided that failure to give notice shall not invalidate the claim if it is shown that it was not reasonably possible to give such notice within such time, and that notice was given as soon as was reasonably possible;
- (b) furnish to the insurer such proof of claim as is reasonably possible in the circumstances of the happening of the *accident or sickness* and the loss occasioned thereby, *within ninety days after the happening of the accident, or, in the case of sickness, within ninety days after the date of termination of the period of disability from sickness for which the insurer is liable*;
- (c) if so required by the insurer, furnish a certificate from a licensed medical practitioner as to the cause and nature of the *accident or sickness* for which the claim is made and as to duration of the disability caused thereby.

Insurer to furnish forms for proof of claim.

13. The insurer shall, upon receiving notice of *accident or sickness*, furnish to the claimant such forms as are usually furnished by them for proofs of claim, and if such forms are not so furnished within fifteen days after receipt of such notice, the claimant shall be deemed to have complied with the requirements of the policy as to proof of claim if he submits, within the time fixed in this policy for filing such proofs, a written statement of the happening and character of the *accident or sickness* and of the extent of the loss for which the claim was made.

Right of examination.

14. The insurer shall have the right, and the claimant shall afford to the insurer an opportunity, to examine the person of the insured when and as often as it may reasonably require while the claim hereunder is pending, and also, in the case of death of the insured, to make an autopsy subject to any law of the province relating to autopsies.

Claimant other than beneficiary.

15. Any claim made under this policy by a claimant other than the beneficiary named in the policy shall be subject to proof of the interest of the claimant.

Who may give notice and proofs of claim.

16. Notice of claim may be given and proofs of claim may be made by the agent of the insured, or of the beneficiary, in case of the absence of the insured or beneficiary, or in case of inability of the insured or the beneficiary to give the notice or make the proof, such absence or inability being satisfactorily accounted for, or in the like case, or if the insured refuses to do so, by a person to whom any part of the insurance money is payable.

When moneys other than for disability payable.

17. All moneys payable under this policy for loss other than that of time on account of disability shall be paid within sixty days after the receipt of proofs of claim.

When indemnity on account of disability payable.

18. The indemnity for loss of time on account of disability shall be paid within thirty days after proof of claim and, as long as the insurer remains liable for the disability, at the expiration of every succeeding sixty days; provided that the insurer may, in case the disability continues, require proof thereof for each such period of sixty days, which proof shall be furnished within ninety days after the termination of each period in respect of which the claim is made.

Right of insured to assign policy.

19. Subject to the laws of the province in which this contract is made, the insured may, without the consent of the beneficiary, assign the policy and may, from time to time, change the beneficiary, or revoke the benefits thereof, or make it entirely payable to himself or to his estate; provided that, if the beneficiary is a preferred beneficiary under the statutes of the province in which the contract is made, the rights of the insured and the beneficiaries hereunder shall be subject to such statutes.

Waiver.

20. The insurer shall not be deemed to have waived any condition of this policy, either in whole or in part, unless the waiver is clearly expressed in writing, signed by the insurer.

Limitation of actions.

21. Any action or proceeding against the insurer for the recovery of any claim under this policy shall be commenced within one year after the cause of action arose.

Certain conditions to be omitted from policy in special cases.

188.—(1) If the policy does not insure against accident, the words of Conditions numbers 3, 6, 12 and 13 relating to accident and printed in italics may be omitted from the policy.

(2) If the policy does not insure against sickness, Condition No. 5, and also the words of Conditions 3, 6, 12 and 13, relating to sickness and printed in italics, may be omitted from the policy.

(3) If the policy provides that the contract may not be terminated by the insurer at any time, the Conditions numbered 9, 10 and 11 may be omitted from the policy. 1924, c. 50, s. 181 (1-3).

Special cases.

(4) If the perils insured against are so limited that any condition other than those enumerated in this section, or any part of such a condition, has no application to the contract, the insurer may, with the approval of the Superintendent, omit such condition or part of a condition from the policy. 1925, c. 54, s. 20.

(5) If an entire condition is omitted pursuant to this section, there shall be inserted after the condition number the following words within brackets ("*This condition is not applicable to this policy and is omitted pursuant to statute*"). 1924, c. 50, s. 181 (5).

189. Where a policy of accident insurance is issued in the form of a ticket through the agency of a railway corporation, the statutory conditions set out in section 187 of this Part need not be printed on the ticket if such policy contains the following notice printed in conspicuous type: "This policy is issued subject to the statutory conditions respecting contracts of accident insurance. 1924, c. 50, s. 182; 1926, c. 49, s. 19. Ticket policy.

190. Where a policy of accident insurance, or a policy of sickness insurance, or a policy of accident and sickness insurance is issued by an insurer in combination with a contract of life insurance, the Superintendent may dispense with the printing of the statutory conditions set out in this Part and approve a composite form of policy appropriate to the nature of the contract. 1924, c. 50, s. 183. Combination accident, sickness and life policy.

191. Where a contract provides that others than the parties thereto may participate in the benefits contracted for and provides for the issue of certificates or other evidence of participation to the beneficiaries, the Superintendent may dispense with the printing of the statutory conditions set out in this Part on such certificates or other evidence of participation if the same indicate in a manner satisfactory to the Superintendent that they are subject to the same provisions as the original contract. 1924, c. 50, s. 184. Blanket policy.

192.—(1) If an insurer desires to vary, omit, or add to the statutory conditions or any of them except as provided in sections 188 and 191, there shall be printed in conspicuous type not less in size than ten point, and in red ink, immediately after such conditions, the proposed variations or additions or a reference to the omissions, with these introductory words: Variations in conditions.

"Variations in Conditions."

"This policy is issued on the above statutory conditions with the following variations, omissions and additions, which are, by virtue of the law of this Province, in force so far only as they shall be held to be just and reasonable to be exacted by the insurer." 1924, c. 50, s. 185 (1); 1925, c. 54, s. 21.

(2) No variation, omission or addition except as provided in sections 188 and 191 shall be binding upon the insured unless the foregoing provisions of this section have been complied with, and any variation, omission or addition shall be so binding only in so far as it is held by the court before which a question relating thereto is tried, to be just and reasonable. 1924, c. 50, s. 185 (2). Effect of variations.

Use of red ink.

193. No red ink shall be used on the face of a policy except the name, address and emblem of the insurer, and the policy number, and for the purposes mentioned in this Act. 1924, c. 50, s. 186.

Relief from forfeiture.

194. In any case where there has been imperfect compliance with a statutory condition as to the proof of loss to be given by the insured or as to any matter or thing to be done or omitted by the insured after the maturity of the contract, and a consequent forfeiture or avoidance of the insurance in whole or in part, and the court deems it inequitable that the insurance should be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as it may deem just. 1924, c. 50, s. 187.

PART VIII.

LIVE STOCK INSURANCE.

Application of Part.

195. This Part shall apply to live-stock insurance and to any insurer carrying on the business of live-stock insurance in the province. 1924, c. 50, s. 188.

Property which may be insured.

196. Every insurer licensed for the transaction of live-stock insurance may, within the limits and subject to the conditions prescribed by the license, insure against loss of live stock, by fire, lightning, accident, disease or other means, except that of design on the part of the insured, or by the invasion of an enemy or by insurrection. 1924, c. 50, s. 189.

Application of provisions as to fire insurance.

197. The following provisions of Part IV of this Act shall apply to live-stock insurance contracts:—

- (a) The provisions as to the form and contents of the policy;
- (b) The provisions as to the conditions including the statutory conditions, except where inapplicable to the nature of the risk;
- (c) The provisions relating to premium notes and assessments other than sections 105, 106 and 114, when the insurance is on the premium-note plan. 1924, c. 50, s. 190.

Term of contract.

198.—(1) Contracts of insurance shall not in any case exceed the term of two years.

Renewing policies.

(2) A contract made for one year or any shorter period may be renewed from time to time at the discretion of the directors by renewal receipt instead of by policy, on the assured paying the required premium or giving his premium note; and all payments or renewal by cash or premium notes shall be made at or before the end of the period for which the policy was granted or renewed, otherwise the policy shall be void.

(3) No premium note taken under any contract of insurance shall exceed forty per centum or be less than ten per centum per annum of the sum insured, and no renewal receipt shall extend the contract beyond two years from the date of the policy. 1924, c. 50, s. 191.

PART IX.

WEATHER INSURANCE.

199. This Part shall apply to weather insurance and to any insurer carrying on the business of weather insurance in the province. 1924, c. 50, s. 192.

200. Every insurer licensed for the transaction of weather insurance may, within the limit and subject to the conditions prescribed by the license, insure against such atmospheric disturbances, discharges or conditions as the contract of insurance shall specify. 1924, c. 50, s. 193.

201.—(1) The following provisions of Part IV of this Act shall apply to weather insurance contracts:—

(a) The provisions as to the form and contents of the policy;

(b) The provisions as to conditions, including the statutory conditions, except where inapplicable to the nature of the risk;

(c) The provisions relating to premium notes and assessments other than sections 105, 106 and 114, where the insurance is on the premium-note plan.

(2) The following additional conditions shall form part of every weather insurance contract:

(i) The insurance may be terminated by the insurer by giving seven days' notice to that effect.

(ii) The insurer is not liable for loss or damage occurring to buildings or structures or to their respective contents where the buildings or structures have been weakened by subsequent alterations unless permission to make such alterations has been previously granted in writing signed by a duly authorized agent of the insurer. 1924, c. 50, s. 194.

202. A contract of weather insurance shall not in any case exceed the term of three years. 1924, c. 50, s. 195.

203. On every premium note taken by the insurer there shall be payable at the commencement of each year of insurance a cash payment amounting to at least one-fifth of one

Assessment
of the
balance.

per centum of the sum insured or *pro rata* when the cash payment is paid in advance for a longer term; and the premium note shall, as to the balance thereof, be subject to assessment by the directors; provided that when the amount of insurance in force exceeds \$3,000,000 and the total assets of the company do not fall below two per centum of the total amount at risk, the Superintendent may authorize the reduction of the cash payment to one-eighth of one per centum of the sum insured per annum, or *pro rata* for a longer term. 1924, c. 50, s. 196.

PART X.

FRATERNAL SOCIETIES.

Interpreta-
tion.

204. In this Part,

"Actuary."

(1) "Actuary" means a Fellow of the Actuarial Society of America, or of the Institute of Actuaries of Great Britain, or of the Faculty of Actuaries in Scotland, provided however, that an actuary who, for a period of not less than five years preceding the date of the passing of this Act, has been serving a licensed fraternal society transacting business in Ontario on the said date as its actuary, and who has been in active practice as an actuary for a period of not less than twenty-five years prior to the said date, may for the purpose of this Act, with the consent of the Superintendent, be continued as an actuary of any such society by which at the said date he is employed as actuary;

"Rates of
contribu-
tion."

(2) "Rates of Contribution" means the regular net premiums, dues, rates or contributions receivable from the members for the purpose of the payment at maturity of the society's certificates or contracts of insurance;

"Society."

(3) "Society" means fraternal society. 1924, c. 50, s. 197.

Application
of Part.

205.—(1) Subject to the provisions of subsection 2, this Part shall apply to all fraternal societies carrying on the business of life insurance in Ontario.

Application
ss. 221 to
226 to
certain
societies.

(2) Sections 221 to 226 inclusive of this Part shall not apply to a fraternal society the membership of which is limited by its constitution or laws to municipal or government employees. 1925, c. 54, s. 22.

What fra-
ternal
societies
required to
be licensed.

206. Fraternal societies required to be licensed under the provisions of this Act include the following:

(a) A company, society, association or organization incorporated before the tenth day of March, 1890,

under chapter 172 of The Revised Statutes of Ontario, 1887, or under any Act for which the said Act was substituted;

- (b) A society incorporated under the provisions of chapter 183 of The Revised Statutes of Ontario, 1914, which undertakes insurance against death or under any Act for which the said Act was substituted;
- (c) An association of the civil servants or employees of the Dominion of Canada incorporated by or under the authority of an Act of the Parliament of Canada;
- (d) A fraternal society incorporated after the 1st day of January, 1924, under the provisions of *The Companies Act*, 1924, c. 50, s. 199. Rev. Stat.
c. 218.

207. No fraternal society shall be licensed:

- (a) If it undertakes insurance contracts with persons other than its own members; or
1924, c. 50, s. 200 (a). Cases in
which such
societies not
to be
licensed.
- (b) If it insures or indemnifies against contingencies other than sickness, accident, disability, or death, or funeral expenses, or if the sum or sums payable on the death of any one person, other than a funeral benefit, exceed in all \$5,000; or
1924, c. 50, s. 200 (b); 1925, c. 54, s. 23.
- (c) If it undertakes old age or endowment insurance other than as authorized in sections 231 and 232, or annuities upon lives; or
1927, c. 59, s. 7.
- (d) If it has upon its books less than seventy-five members in good standing; or
- (e) If it is in effect the property of its officers or collectors, or of any other person for his own benefit, or is conducted as a mercantile or business enterprise, or for the purpose of mercantile profit, or if its funds are under the control of persons or officers appointed for life and not under that of the insured; or
- (f) In the case of a fraternal society which has not been authorized to carry on business in Ontario before the passing of this Act, unless the society files with the Superintendent a declaration of its actuary in the form and to the effect required by the provisions of subsection 2 of section 220.
1924, c. 50, s. 200 (d-f).

Societies not
deemed to
be fraternal
societies.

208. The following shall not be deemed fraternal societies within the meaning of this Part or required or entitled to be licensed as such:

- (a) Societies known as mutual benefit societies as defined in section 1 and subject to Part XI of this Act, including;
 - (i) A society incorporated under the provisions of sections 36 to 41 of chapter 183 of the Revised Statutes of Ontario, 1914, or any Act for which the same was substituted which does not undertake contracts of life insurance;
 - (ii) A trade union in Ontario which, under the authority of its incorporating Act, or charter, has an insurance or benefit fund for the benefit of its own members exclusively;
 - (iii) A mutual benefit society incorporated after the 1st day of January, 1925, under the provisions of *The Companies Act*;
- (b) Pension fund and employees benefit societies incorporated under the provisions of *The Companies Act*;
- (c) A corporation not otherwise provided for in this Act which has by or under the authority of an Act of the Parliament of Canada created a fund for paying a gratuity on the happening of death, sickness, infirmity, casualty, accident, disability or any change of physical or mental condition;
- (d) A corporation not otherwise provided for in this Act which has by or under the authority of an Act of the Parliament of Canada an insurance and provident society or association, or an insurance or guarantee fund in connection with the corporation; 1924, c. 50, s. 201 (*a-d*).
- (e) A corporation which undertakes or offers to undertake contracts of insurance other than with its own members exclusively, or for more than \$5,000, payable on the death of any one member other than a funeral benefit, or any contracts of insurance with its members other than
 - (i) Life insurance; or
 - (ii) Contracts for the payment of mortuary or funeral benefits; or
 - (iii) Old age insurance; or
 - (iv) Endowment insurance as authorized in section 232. 1924, c. 50, s. 201 (*f*); 1925, c. 54, s. 24 (2); 1927, c. 59, s. 8.

Rev. Stat.
c. 218.

(f) A corporation in which the insurance fund is used for the purposes of a mercantile or business enterprise, or for mercantile profit, or a society formed on the lodge system, the insurance fund of which is held other than as a trust fund for the members insured; 1924, c. 50, s. 201 (g).

(g) A society in which the persons insured do not exercise, either directly or through representatives elected for a term not exceeding four years, effective control over the insurance fund of the society; or in which the officers or other persons having the disposition, control or possession of the insurance fund are elected or appointed for a longer period than three years; 1924, c. 50, s. 201 (h); 1925, c. 54, s. 24 (3).

(h) Any corporation which undertakes contracts of insurance but is not formed exclusively for that purpose and which does not for the purposes of such contracts keep distinct and separate funds, securities, books and vouchers. 1924, c. 50, s. 201 (i).

209.—(1) Clause *c* of section 207 and clause *e* of section 208 shall not apply to contracts guaranteeing the fidelity of officers, servants or employees of the branches or subdivisions of the corporation, and shall not disentitle to license a fraternal society which before the 1st day of January, 1925, was *bona fide* transacting exclusively with its members endowment insurance in Ontario, and which has continued so to do up to the date of application for license. 1924, c. 50, s. 202; 1925, c. 54, s. 25 (1).

Guarantee
and
endowment
insurance.

(2) The clause lettered *c* in section 207, in so far as it relates to annuities upon lives, shall not apply to or disentitle to license any society the membership of which is limited by its constitution or laws to municipal or government employees undertaking annuities on lives in the nature of old age pensions. 1925, c. 54, s. 25 (2).

Societies
composed of
municipal or
government
employees.

210.—(1) Where two or more lodges or branches of a society, though separately incorporated, are under the financial or administrative control of a central governing body in Ontario, or a duly authorized provincial representative of the society, such governing body if incorporated or such provincial representative of the society, may, if the Superintendent thinks proper, be dealt with as the society.

Central
body for
Ontario or
representa-
tive may be
dealt with.

(2) In the case of a fraternal society incorporated elsewhere than in Ontario the central governing or controlling body in Ontario if incorporated by virtue of the law of Ontario may, if the Superintendent thinks proper, be dealt with as the society. 1924, c. 50, s. 203.

When cen-
tral body for
Ontario in-
corporated.

By-laws and rules to be filed with Superintendent.

211.—(1) Every fraternal society shall with its application for license file in the office of the Superintendent, duly certified copies in duplicate of those articles or provisions of the subsisting constitution, by-laws or rules which contain material terms not set out in the instrument of contract adopted by the society, and shall from time to time file in the office of the Superintendent duly certified copies in duplicate of every amendment, revision or consolidation of the said articles or provisions of the constitution, by-laws and rules, within thirty days after the passing or adoption of such amendment, revision or consolidation thereof.

Superintendent may take exception within 30 days.

(2) The Superintendent may within thirty days after the date of such filing take exception to any amendment or revision or any part thereof if, in his opinion, such amendment or revision or any part thereof is (i) contrary to the provisions of this Act, or (ii) actuarially unsound or (iii) oppressive to or discriminatory in application against any class of the membership of the society or (iv) unjust or unreasonable.

Notice.

(3) If the Superintendent takes exception to any such amendment or revision or any part thereof, in accordance with the provisions of this section, he shall forthwith notify the society thereof in writing and the reasons therefor.

Appeal.

(4) The society or any person who deems himself aggrieved by the decision of the Superintendent may appeal therefrom in the manner provided by section 12.

Certified by-laws and rules to be filed with Provincial Registrar.

(5) The original constitution, by-laws and rules and any amendment, revision or consolidation thereof, to which the Superintendent does not take exception, or which after the Superintendent has taken exception to any amendment or revision or any part thereof have been further amended, in accordance with the Superintendent's direction, or which after the Superintendent has taken exception to any amendment or revision or any part thereof has been approved and confirmed on appeal from the Superintendent as herein provided, shall be certified by the Superintendent to be duly passed by the society, as filed and a copy thereof so certified by the Superintendent shall be filed by him in the office of the Provincial Registrar.

By-laws and rules as filed to be binding on society.

(6) The constitution, by-laws or rules and any amendment, revision or consolidation thereof so certified shall, notwithstanding the declaration or other instrument filed under any general or special Act, be deemed to be the rules in force on and after the date of the certificate until a subsequent amendment, revision or consolidation is in like manner certified and filed and so from time to time, and shall be binding and obligatory upon all members of the society and upon all their beneficiaries and legal representatives and upon everyone entitled to any benefit under any certificate of the society, provided that the failure of the Superintendent to take ex-

ception to any rule of the society or amendment or revision thereof and his certifying and filing of the same shall not make valid any provision of such rule which is inconsistent with the provisions of this Act.

(7) The provisions of this section shall not apply to the constitution, by-laws and rules of a society or any amendment, revision or consolidation thereof passed and adopted by the society prior to the passing of this Act. 1924, c. 50, s. 204.

Effect of
section.

212. Where, because of a provision in any of its rules, a society otherwise entitled to be licensed ought not, in the opinion of the Superintendent to be licensed, it shall not be entitled to a license until it has repealed or amended such rules in accordance with the direction of the Superintendent. 1924, c. 50, s. 205.

When rules
must be
amended.

213.—(1) A copy of all rules of a society relating to its insurance contracts and to the management and application of its insurance funds shall be delivered by the society to any person requiring the same on payment of twenty-five cents.

Rules
deliverable
on demand.

(2) If an officer or agent of a society, with intent to mislead or defraud, gives to any person a copy of rules other than the rules then in force on the pretence that the same are the rules then in force, he shall be guilty of an offence. 1924, c. 50, s. 206.

Fraudulent
delivery.

214.—(1) Where by the constitution and rules of a society provision is made for the payment of an ascertained or ascertainable sum to a member of the society in the event of his becoming totally disabled, or of his reaching a stated age, or upon the concurrence of both events, whether such provision is combined with other life insurance or not, such society may with the approval of the Superintendent so amend its constitution and rules as to provide for the payment of such sum in equal consecutive annual instalments without interest, the payment of such instalments to be completed within a period not exceeding ten years from the happening of the event, but no person who has become entitled, or may become so entitled as aforesaid, to any such annual instalment shall receive payment of the same unless at the maturity of each instalment such person has continued to be a member of the society and has paid all dues and assessments adopted by the society.

Substitution
of instal-
ments for
gross pay-
ment.

(2) All such amendments which have heretofore been or which may hereafter be made by any society pursuant to the provisions of the constitution and rules shall be valid and binding upon all its members and upon all their beneficiaries and legal personal representatives and upon every one entitled, notwithstanding anything to the contrary in the instrument of incorporation of the society or the previous provisions of its constitution and rules.

Amendments
of rules to
that intent
validated.

When insured dies before receiving all instalments.

(3) If a member of such society dies after becoming totally disabled or reaching the stated age, but before the payment of all instalments, the instalments unpaid shall form part of the insurance money or benefits payable upon the death of such member.

Unmatured policies as liabilities.

(4) No unmaturred policy or contract of insurance shall create any claim or liability against the society while a going society, or against the estate of the society in a winding up or liquidation, but in a winding up or liquidation the insured or beneficiary for value under such unmaturred policy or contract shall be entitled to share in the surplus assets of the society. 1924, c. 50, s. 207.

Limitation of member's liability in fraternal society.

215.—(1) The liabilities of a member under his contract shall at any date be limited to the assessments, fees and dues which became payable within the preceding twelve months and of which at such date notice had been given in accordance with the constitution and rules of the society.

Withdrawal of member.

(2) A member may at any time withdraw from the society by delivering or sending by registered post to the society notice in writing of his intention to withdraw and paying or tendering the assessments, fees and dues mentioned in subsection 1.

Release from liability.

(3) After such withdrawal the member shall become thereby released from all further liability under his contract.

Subject to rules.

(4) This section shall be subject to the provisions of any rules to the contrary certified by the Superintendent and filed with the Provincial Registrar as hereinbefore provided. 1924, c. 50, s. 208.

Notice before forfeiture of benefit.

216.—(1) No forfeiture or suspension shall be incurred by reason of any default in paying any contribution or assessment, except such as are payable in fixed sums and at fixed dates, until after notice to the member stating the amount due by him, and that in case of default of payment within a reasonable time, not less than thirty days, to the proper officer, who shall be named in such notice, his interest or benefit will be forfeited or suspended, and default has been made by him in paying his contributions or assessment in accordance with such notice.

"Fixed dates."

(2) "Fixed dates" in subsection 1 shall include any numbered day, or any Monday, Tuesday, or as the case may be, numbered, alternate or recurring, of a stated month or months.

Saving rights to re-instatement.

(3) Where under the constitution or rules or by-laws of the society a defaulting member is entitled to be reinstated on payment of arrears, after a stated number of days' default, this section shall not prejudice the rights of such member. 1924, c. 50, s. 209.

217.—(1) Where it is stipulated that the benefit of the contract shall be suspended or reduced or forfeited for any other reason than for non-payment of money such condition shall not be valid unless it is held to be just and reasonable under the circumstances of the case. Conditions of forfeiture restricted.

(2) In any contract of which total abstinence from intoxicating liquors is made an express condition such condition shall be deemed to be just and reasonable. 1924, c. 50, s. 210. Condition as to abstinence.

218. Any notice required to be given to a member for any purpose of this Act or of the rules of the society may be effectually given if written or printed notice is delivered, or is sent by registered post to the member, or is left at his last known place of abode or of business or by publication in the official paper of the society. 1924, c. 50, s. 211; 1925, c. 54, s. 26. If how notice may be given to members

219. A society incorporated under any Act of this Legislature shall not be entitled to a license unless its head office is located and maintained in Ontario and the secretary and treasurer are *bona fide* residents in Ontario. 1924, c. 50, s. 212. Head Offices of (Ontario societies.

220.—(1) Subject to the provisions of subsection 4, in addition to the annual statement required to be filed under this Act, each society shall file with the Superintendent not later than the 1st day of May in each year a valuation of its certificates or contracts of insurance in force at the last preceding 31st day of December, which valuation shall have regard to the prospective liabilities of the society under its certificates or contracts of insurance and to the rates of contribution to be thereafter received from its members on such certificates according to the rates in force at the date of valuation, and shall be made and certified by an actuary appointed by the society and shall include a valuation balance sheet in such form and detail as the Superintendent may from time to time prescribe. 1924, c. 50, s. 213 (1); 1925, c. 54, s. 27. Societies to file actuarial report annually.

(2) Where in the opinion of the actuary appointed by the society the valuation balance sheet shows that the society is in a position to provide for the payment of its contracts of insurance as they mature, without deduction or abatement and without increase in its existing rates of contribution, the society shall file with the Superintendent a declaration of the actuary to that effect. Society to file declaration of actuary, under what circumstances.

(3) A summary of the valuation certified by the actuary and a statement as to the financial condition of the society disclosed by such valuation shall be mailed to each insured member not later than the 1st day of June in each year or in lieu thereof such certified summary of the valuation and statement of the actuary may be published in the society's official paper and a copy mailed to each insured member. 1924, c. 50, s. 213 (2, 3). Distribution of summary and statement to members.

Exception
as to
certain
fraternal
societies.

(4) A fraternal society the membership of which is limited by its constitution or laws to municipal or government employees shall not be required to file the valuation mentioned in subsection 1 or to publish the summary thereof mentioned in subsection 3 unless and until required by the Superintendent in writing so to do. 1925, c. 54, s. 27.

Where
assets of
society in-
sufficient,
Superin-
tendent to
report to
Minister.

221.—(1) If it appears to the Superintendent from the statement and reports filed with him or from an examination or valuation made in pursuance of this Act, that the assets of a licensed fraternal society applicable to the payment of its insurance contracts are insufficient to provide for the payment of its contracts of insurance at maturity without deduction or abatement and without increase in its existing rates of contribution, he shall make a special report to the Minister as to the financial condition of the society.

Minister
may request
society to
increase its
rates, etc.

(2) If the Minister, after consideration of the said report concurs in the opinion of the Superintendent, the Minister shall request the society to make, within such time as he may prescribe, but not exceeding four years, such increase in its rates of contribution or such reduction in the benefits payable under its contracts of insurance or otherwise, as will enable the society to provide for the payment of its contracts of insurance at maturity.

Society to
act upon
request.

(3) On receipt of such request the society shall take the steps prescribed by its laws or constitution for putting into effect such changes as may be approved by the actuary appointed by the society for the purpose aforesaid.

Special
meeting to
consider
request of
Minister.

(4) Where in the opinion of the governing executive authority of the society a special meeting of the society is desirable for the purpose of considering the request of the Minister, the said governing executive authority of the society may call a special meeting of the supreme legislative body of the society upon such notice as the said governing executive authority may deem reasonable, and as the Superintendent may approve and such meeting so called shall be deemed to have been regularly constituted notwithstanding any provisions contained in the constitution and laws of the society. 1924, c. 50, s. 214.

Reduction
of benefits,
or increase
of rates.

222. A fraternal society incorporated under the laws of Ontario may by amendment of its constitution and laws reduce the benefits payable under its contracts of insurance or some of them, or increase the rates of contribution payable by its members as a whole or some class or classes thereof, or make such other changes as are necessary to comply with the aforesaid request of the Minister and such amendments when adopted by a majority of the votes duly cast by the members of the supreme legislative body of the society at a regular or special meeting of the said supreme legislative body of the society duly called shall be binding upon the members of the

society and upon their beneficiaries or legal representatives and upon all persons deriving legal rights from any member or beneficiary, notwithstanding anything contained in the provisions of its constitution and laws before such amendments, or in its Act or instrument of incorporation, or in any contract, policy or certificate of insurance heretofore or hereafter issued by the society. 1924, c. 50, s. 215.

223.—(1) Where any society does not within the time allowed comply with the request of the Minister as prescribed by subsection 2 of section 221 the Superintendent shall report the default to the Minister, who shall thereupon appoint a readjustment committee of three persons of whom at least one shall be an actuary who shall at as early a date as practicable investigate the assets, liabilities, rates of contribution and plans of insurance of such society and prepare a report containing such amendments to such society's constitution and laws reducing the benefits payable under its contracts of insurance or some of them or increasing the rates of contribution payable by its members as a whole or some class or classes thereof, or such other amendments as said readjustment committee deem necessary in order to provide for the payment of all the contracts of insurance of such society as they mature, in accordance with said amendments.

Default of society in complying with request of Minister.

(2) The said readjustment committee shall file such report in the office of the Superintendent and deliver to the society a certified copy thereof and immediately upon such report being filed with the Superintendent the amendments contained therein shall be and become part of the constitution and laws of such society and shall be valid and binding upon all its members and upon their beneficiaries or legal personal representatives and upon all persons deriving legal rights from any member or beneficiary notwithstanding anything contained in the provisions of its constitution and laws before such amendments or in its Act or instrument of incorporation or in any policy or certificate of insurance issued by such society.

Amendments in report of readjustment committee to become part of constitution and laws of society.

(3) The said readjustment committee shall in the said amendments fix a date not more than six months after the date of filing of the report when the reduction of benefits or increase in the rate of contribution provided for by such amendments shall be in full force and effect.

Date to be fixed in report.

(4) Such society shall bear the expense of the investigation and report and furnish the readjustment committee with required information. 1924, c. 50, s. 216.

Expenses.

224.—(1) Where a society which is unable to furnish the declaration of an actuary prescribed in subsection 2 of section 220 has heretofore adopted or shall hereafter adopt new rates of contribution which in the opinion of the actuary appointed by the society, filed with the Superintendent, make reasonable provision for the payment in full at maturity of the con-

Where society unable to furnish declaration of actuary.

tracts of insurance issued to its members who have entered or shall enter the society upon such new rates of contribution, such society shall, after the payment of the matured contracts of such members, create and from time to time maintain out of the rates of contributions of such members and interest accretions thereto, a reserve fund not less than the amount which, with the rates of contributions to be collected from such members, is, in the opinion of the actuary, required to pay in full such contracts of insurance as they mature, and such fund shall be a separate fund of the society and shall not be liable for payment of the debts and obligations of the society under its contracts of insurance with those members who have not contributed to the funds of the society under said new rates of contribution or under the provisions contained in subsection 2 of this section.

New certificates may be issued.

(2) The society may provide in its constitution and laws for the issue of new certificates to members admitted to the society prior to the establishment of such fund upon such terms and conditions as will in the opinion of the actuary appointed by the society certified in writing to the Superintendent enable the society to pay in full the contracts of insurance issued to such members as they mature and the provisions of subsection 1 of this section shall apply to such new certificates.

Annual valuation of actuary, what to show.

(3) The annual valuation of the actuary of the society maintaining a separate fund as hereinbefore prescribed shall show clearly and separately and in such detail as the Superintendent may require, the financial position of the society in respect of the certificates of insurance included, and those not included, within the scope of the separate fund.

Merger of funds.

(4) When a society which has been maintaining a separate fund for new members in accordance with the provisions of this section files with the Superintendent a declaration of the actuary appointed by the society in accordance with the provisions of subsection 2 of section 220, the separate fund may, with the approval of the Superintendent, be merged with the other funds of the society of a kindred nature.

Maintenance of common expense fund.

(5) Nothing herein contained shall prevent a society which maintains a separate fund as hereinbefore described, from maintaining a common expense fund. 1924, c. 50, s. 217.

Life insurance of children.

225. Where a society is authorized by its constitution and laws and undertakes in Ontario to insure the lives of children the rates of contribution for such child insurance shall be approved by an actuary and the society shall maintain out of the rates paid upon contracts of child insurance and interest accretions thereto, a separate fund for the payment at maturity of such contracts, and the actuary appointed by the society to value its contracts of insurance shall make a separate

valuation of the outstanding child insurance contracts, and shall show the amount of the fund held for such contracts. 1924, c. 50, s. 218.

226. A society which files with the Superintendent the declaration prescribed by subsection 2 of section 220 or a society that is maintaining a separate fund for its contracts of insurance as prescribed by section 224 may provide in its constitution and laws for the issue of contracts of life insurance wherein the regular rates of contributions payable thereunder may be limited to a period of twenty or more years, provided such rates of contribution have been approved by an actuary and provided further that such certificates of insurance shall be subject to the provisions of subsection 1 of section 224 but such limitation of payments shall not affect the right of the society to make an assessment or assessments in respect of such certificates in accordance with the constitution and laws of the society either during or after the period of such limited payments. 1924, c. 50, s. 219.

Society may limit period to twenty years, under what circumstances.

Proviso.

227. In event of an epidemic or other unforeseen contingency impairing the funds of a society the governing executive authority of the society may impose a special assessment or special assessments upon the members of the society or upon such class or classes thereof and with such incidence as in the opinion of the governing executive authority is deemed necessary and equitable, and such special assessment or assessments shall be binding on the members of the society notwithstanding anything to the contrary in its Act or instrument of incorporation or its constitution and laws, or in any certificate of insurance heretofore or hereafter issued by the society. 1924, c. 50, s. 220.

Epidemic or unforeseen contingency.

228. The governing executive authority of a society may make such additional levies from time to time upon all members of the society as shall be necessary, in the opinion of the governing executive authority, to properly carry on the work of the society and prevent any deficit in its general or expense fund, and such additional levies shall be binding on the members of the society notwithstanding anything to the contrary in its Act or instrument of incorporation, or in its constitution or laws, or in any certificate of insurance heretofore or hereafter issued by the society. 1924, c. 50, s. 221.

General or expense fund.

229. A society whose valuation balance sheet prescribed by subsection 1 of section 220 shows a surplus of assets of more than five per centum over and above all net liabilities may apply such portion of such surplus as may be approved by the actuary appointed by the society, in the manner prescribed by the constitution and laws of the society. 1924, c. 50, s. 222.

Application of surplus.

Certificate of approval of actuary to be filed with Superintendent before putting into effect new benefits.

230. Every licensed fraternal society shall before putting into effect any new or additional benefits or any new scale of rates of contribution under certificates of insurance, file with the Superintendent a certificate of an actuary approving of such benefits or rates of contribution. 1924, c. 50, s. 223.

Old age insurance in fraternal society.

231. Notwithstanding anything in this Act a fraternal society licensed under this Act which files with the Superintendent a declaration of an actuary as provided by subsection 2 of section 220 hereof may, if its constitution so provides and subject thereto, issue to its members old age insurance contracts providing for the payment of the money due on maturity thereof either at death or upon the insured attaining any age not less than sixty-five years. 1924, c. 50, s. 224; 1927, c. 59, s. 9.

Endowment insurance.

232. A fraternal society licensed under this Act, having more than five thousand members in the life insurance department, and having made a net increase in the amount of life insurance in force during the two next preceding calendar years, and which has filed with the Superintendent for at least three successive years a declaration of an actuary as provided by subsection 2 of section 220 hereof may, if its constitution so provides and subject thereto, issue to its members endowment insurance contracts providing for the payment of the insurance money to such members at the expiration of twenty or more years from the date of such contracts, or to the beneficiary or beneficiaries under any of such contracts in case of death of any of such members prior to the expiration of the endowment period. 1927, c. 59, s. 10.

Surrender values and other equities.

233. A fraternal society licensed under this Act which files with the Superintendent a declaration of an actuary as provided by subsection 2 of section 220 hereof may, if its constitution so provides and subject thereto, grant such surrender values or other equities as may be approved by the actuary of the society and authorized by its constitution. 1927, c. 59, s. 11.

Report by Superintendent where assets of certain societies insufficient.

234.—(1) If it appears to the Superintendent from the statements and reports filed with him or from an examination or valuation made in pursuance of this Act that the assets of a licensed fraternal society, the membership of which is limited by its constitution or laws to municipal or government employees applicable to the payment of its insurance contracts, are insufficient to provide for the payment of its contracts of insurance at maturity without deduction or abatement and without increase in its existing rates of contribution, he shall make a special report to the Minister and to the head or responsible officer of the municipality or government of which the members of the society are employees as to the financial condition of the society.

(2) The Superintendent shall not make any order or assume any responsibility for the readjustment of rates and benefits of the society necessary to enable it to provide for the payment of the contracts of insurance of the society at maturity but a synopsis of his special report shall be reported in his annual report. 1925, c. 54, s. 28; 1927, c. 59, s. 12.

PART XI.

MUTUAL BENEFIT SOCIETIES.

235. Mutual benefit societies required to be licensed under the provisions of this Act include the following: What societies required to be licensed.

- (a) A society incorporated under the provisions of sections 36 to 41 of chapter 183 of the Revised Statutes of Ontario, 1914, or any Act for which the same was substituted, which does not undertake contracts of life insurance;
- (b) A mutual benefit society incorporated after the 1st day of January, 1925, under the provisions of *The Companies Act*. 1924, c. 50, s. 225; 1926, c. 49, s. 20. Rev. Stat. c. 218.

236.—(1) Subject to the provisions of subsection 2, no mutual benefit society shall be licensed, or have its license renewed, What societies may not be licensed.

- (a) If it has upon its books less than 75 members in good standing;
- (b) if it insures or indemnifies against contingencies other than sickness, disability or funeral expenses;
- (c) if it contracts for sick benefits for an amount in excess of twelve dollars per week or for a funeral benefit in excess of two hundred dollars;
- (d) if it undertakes insurance contracts with persons other than its own members;
- (e) if it is in effect the property of its officers or collectors, or of any other person for his own benefit, or is conducted as a mercantile or business enterprise, or for the purpose of mercantile profit, or if its funds are under the control of persons or officers appointed for life and not under that of the insured;
- (f) if it has charge of, or manages or distributes charity or gratuities or donations only. 1924, c. 50, s. 226; 1927, c. 59, s. 13, *part*.

Exception.

(2) The Minister may, in his discretion, renew the license of any mutual benefit society notwithstanding that it has upon its books, at the time of application for such renewal, less than seventy-five members in good standing. 1927, c. 59, s. 13, *part*.

Application
of certain
sections of
Part X.

237. The provisions of sections 210, 211 and 212 of this Act shall apply *mutatis mutandis* to societies licensed under this Part. 1924, c. 50, s. 227.

PART XII.

PENSION FUND ASSOCIATIONS.

Application.

238.—(1) The provisions of this Part shall apply to all applications for license of pension fund associations and to such pension fund associations when licensed under the provisions of this Act.

(2) Subject to the express provisions of this Part, the provisions of this Act applicable to insurers licensed to undertake contracts of life insurance in Ontario, except sections 37 to 68 inclusive, section 74 and Part V, shall apply to all pension fund associations. 1927, c. 59, s. 14, *part*.

Valuation to
be filed.

239. In addition to the annual statements required to be filed by every licensed insurer on or before the last day of February in each year, each pension fund association shall file with the Superintendent in such form and at such times as he may require, a valuation of its certificates or contracts of insurance, which valuation shall have regard to the prospective liabilities of the pension fund association under its certificates or contracts of insurance, and to the rates of contribution to be thereafter received from its members on such certificates according to the rates of contribution in force at the date of valuation, and shall be made and certified by an actuary appointed by the pension fund association and approved by the Superintendent, and shall include a valuation balance sheet in such form and detail and according to such standards of valuation, having regard to the table of mortality and the rate of interest to be employed, as the Superintendent may from time to time prescribe. 1927, c. 59, s. 14, *part*.

PART XIII.

RECIPROCAL OR INTER-INSURANCE EXCHANGES.

Interpreta-
tion.

"Attorney."

240. In this Part, unless the context otherwise requires:

(a) "Attorney" shall mean a person authorized to act for subscribers as provided in section 243;

"Subscribers."
ers."

(b) "Subscribers" shall mean persons exchanging with each other reciprocal contracts of indemnity or inter-insurance as provided in section 241. 1924, c. 50, s. 228.

241. It shall be lawful for any person to exchange with other persons in Ontario and elsewhere reciprocal contracts of indemnity or inter-insurance for any class of insurance for which an insurance company may be licensed under the provisions of this Act except life insurance, accident insurance, sickness insurance and guarantee insurance. 1924, c. 50, s. 229.

Authority for exchange of reciprocal contracts of insurance.

242. No person shall be deemed to be an insurer within the meaning of this Act by reason of exchanging with other persons reciprocal contracts of indemnity or inter-insurance under the provisions of this Act. 1924, c. 50, s. 230.

Subscriber not to be deemed an insurer.

243.—(1) Reciprocal contracts of indemnity or inter-insurance may be executed on behalf of subscribers by any other person acting as attorney under a power of attorney, a copy of which has been duly filed as hereinafter provided.

Execution of contract.

(2) Notwithstanding any condition or stipulation of any such power of attorney or of any such contract of indemnity or inter-insurance, any action or proceeding in respect of any such contract may be maintained in any court of competent jurisdiction in Ontario. 1924, c. 50, s. 231.

Who may maintain action in contract.

244. The persons constituting the exchange shall, through their attorney, file with the Superintendent a declaration verified by oath, setting forth:

Declaration by members of exchanges.

- (a) The name of the attorney and the name or designation under which such contracts are issued, which name or designation shall not be so similar to any other name or designation previously adopted by any exchange or by any licensed insurer as in the opinion of the Superintendent to be likely to result in confusion or deception;
- (b) The classes of insurance to be effected or exchanged under such contracts;
- (c) A copy of the form of the contract, agreement or policy under or by which such reciprocal contracts of indemnity or inter-insurance are to be effected or exchanged;
- (d) A copy of the form of power of attorney under which such contracts are to be effected or exchanged;
- (e) The location of the office from which such contracts are to be issued;
- (f) A financial statement in the form prescribed by the Superintendent;

(g) Evidence satisfactory to the Superintendent that it is the practice of the exchange to require its subscribers to maintain in the hands of the attorney, as a condition of membership in the exchange, a premium deposit reasonably sufficient for the risk assumed by the exchange;

(h) Evidence satisfactory to the Superintendent that the management of the affairs of the exchange is subject to the supervision of an advisory board or committee of the subscribers in accordance with the terms of the power of attorney. 1924, c. 50, s. 232.

Form of
license.

245.—(1) Upon an exchange complying with the provisions of this Part the Superintendent may issue a license in accordance with the form in Schedule "C" hereto. 1924, c. 50, s. 233 (1).

Deposit.

(2) Notwithstanding anything in this Act contained the Superintendent may, with the approval of the Minister, require an exchange, as a condition of the issue or renewal of its license, to deposit approved securities with the Minister in such amount and upon such terms and conditions as the Superintendent may deem proper. 1925, c. 54, s. 29.

Evidence
required
before issue
of license
for;

246. A license shall not be issued to an exchange to effect or exchange contracts of indemnity or inter-insurance,—

Fire
Insurance.

(a) Against loss by fire, until evidence satisfactory to the Superintendent has been filed with him that applications have been made for indemnity upon at least seventy-five separate risks in Ontario or elsewhere aggregating not less than one and one-half million dollars as represented by executed contracts or *bona fide* applications to become concurrently effective;

Automobile
Insurance.

(b) In respect of automobiles, until evidence satisfactory to the Superintendent has been filed with him that applications have been made for indemnity upon at least five hundred automobiles as represented by executed contracts or *bona fide* applications to become concurrently effective, and that arrangements satisfactory to the Superintendent are in effect for the re-insurance of all liabilities in excess of such limits as the Superintendent may prescribe. 1924, c. 50, s. 234.

Service of
process.

247. Where the office from which such contracts are to be issued is not in Ontario, service upon the Superintendent of notice or process in any action or proceeding in Ontario in respect of contract of indemnity or inter-insurance effected

by the exchange, shall be deemed service upon the subscribers who are members of the exchange at the time of such service. 1924, c. 50, s. 235.

248. There shall be filed with the Superintendent by the attorney, as often as the Superintendent may require, a statement of the attorney under oath showing, in the case of fire insurance, the maximum amount of indemnity upon any single risk and a statement of the attorney verified by oath to the effect that he has examined the commercial rating of the subscribers of the exchange as shown by the reference book of a commercial agency, having at least five hundred subscribers and that from such examination or other information in his possession it appears that no subscriber has assumed on any single fire insurance risk, an amount greater than ten per centum of the net worth of such subscriber. 1924, c. 50, s. 236.

249.—(1) There shall at all times be maintained with such attorney, as a reserve fund, a sum in cash or approved securities equal to fifty per centum of the annual deposits or advance premiums collected or credited to the accounts of subscribers on contracts in force having one year or less to run, and *pro rata* on those for longer periods.

(2) Except as hereinafter provided, there shall also be maintained as a guarantee fund or surplus, an additional sum, in excess of all liabilities, in cash or approved securities amounting to not less than fifty thousand dollars.

(3) In the case of a fire insurance exchange whose principal office is in Ontario, the guarantee fund or surplus referred to in subsection 2 shall not be less than twenty-five thousand dollars.

(4) In the case of an automobile insurance exchange whose principal office is in Ontario, the guarantee fund or surplus referred to in subsection 2 shall, during the first year of operation of the exchange, be maintained at an amount not less than ten thousand dollars, and thereafter not less than twenty-five thousand dollars.

(5) If at any time the amounts on hand are less than the foregoing requirements the subscribers or the attorney shall forthwith make up the deficiency.

(6) Where funds other than those which accrued from premiums or deposits of subscribers are supplied to make up a deficiency as herein provided for, such funds shall be deposited and held for the benefit of subscribers under such terms and conditions as the Superintendent may require so long as a deficiency exists and may thereafter be returned to the depositor.

"Approved securities."

(7) In this section "approved securities" means securities the investment in which is authorized by the provisions of section 250 hereof. 1924, c. 50, s. 237.

Investment of surplus funds and reserve.

Rev. Stat. c. 218.

250.—(1) If the principal office of the exchange is in Ontario, the surplus insurance funds and the reserve fund of the exchange shall be invested in the class of securities authorized by *The Companies Act* for the investment of the reserve funds of a joint stock insurance company incorporated thereunder.

Evidence as to investments.

(2) If the principal office of the exchange is outside Ontario it shall be a condition precedent to the issue of a license under this Act that evidence satisfactory to the Superintendent shall be filed with him showing that the class of security in which funds of the exchange are required by law to be invested, and are in fact invested, is within the limits of investment prescribed for the investment of the reserve funds of an insurance corporation by the jurisdiction in which the office of the exchange is situate. 1924, c. 50, s. 238.

Contracts must be on behalf of subscribers only.

251.—(1) No exchange shall undertake any liability on a contract of indemnity, inter-insurance or insurance except on behalf of a subscriber.

Re-insurance in another exchange.

(2) No attorney or exchange shall effect re-insurance of any risks undertaken by the exchange in any other reciprocal or inter-insurance exchange. 1924, c. 50, s. 239.

Attorney not to act until license granted.

252.—(1) No person shall act as attorney, or for or on behalf of any attorney, in the exchange of reciprocal contracts of indemnity or inter-insurance, or in acts or transactions in connection therewith, unless and until a license has been issued and unless such license is in force.

Penalty.

(2) Any person who, in contravention of subsection 1 undertakes or effects or agrees or offers to undertake or effect any exchange of reciprocal contracts of indemnity or inter-insurance or any act or transaction in connection therewith shall incur a penalty of not less than fifty dollars or more than five hundred dollars recoverable under *The Summary Convictions Act*. 1924, c. 50, s. 240.

Rev. Stat. c. 121.

Suspension or revocation of license.

253.—(1) Where a licensed exchange or attorney fails or refuses to comply with or contravenes any provision of this Act, the license of the exchange may be suspended or revoked by the Minister on the report of the Superintendent after due notice and opportunity for a hearing before the Superintendent has been given to the exchange or its attorney, but such suspension or revocation shall not affect the validity of any reciprocal contracts of indemnity or inter-insurance effected prior thereto or the rights and obligations of subscribers under such contracts.

(2) Notice of such suspension or revocation shall be given Notice. by the Superintendent in at least two successive issues of the *Ontario Gazette* as soon as reasonably may be after such suspension or revocation. 1924, c. 50, s. 241.

254. The attorney shall, on or before the 1st day of March Annual tax. in each year, pay to the Treasurer of Ontario for the use of the Province, an annual tax equal to one and one-third per centum of the gross premiums or deposits collected from subscribers in respect of risks located in Ontario during the preceding calendar year after deducting returns for cancellations, considerations for re-insurances with licensed insurers and all amounts returned to subscribers or credited to their accounts as savings during such year. 1924, c. 50, s. 242; 1926, c. 49, s. 21 (1).

255. Notwithstanding anything in this Act any person Fire insurance in un- may insure against fire any property situated in Ontario licensed exchanges in any exchange not licensed under this Act, and any property may be effected outside of so insured or to be insured may be inspected and any loss Ontario. incurred in respect thereof adjusted, provided such insurance is effected outside of Ontario and without any solicitation in Ontario directly or indirectly on the part of the insurer. 1924, c. 50, s. 243.

PART XIV.

AGENTS, BROKERS AND ADJUSTERS.

Licenses of Insurance Agents.

256.—(1) The Superintendent may issue to any person Licensing agent. who has complied with the requirements of this Act a license authorizing such person to carry on business as an insurance agent subject to the provisions of this Act and to the terms of the license.

(2) Licenses so issued shall be of two classes:

Classification.

(a) Licenses for life insurance, or life and accident insurance, or life and accident and sickness insurance;

(b) Licenses for any classes of insurance other than life insurance. 1924, c. 50, s. 244 (1, 2).

(3) Upon written notice to the Superintendent that a Issue of license. licensed insurer has appointed a person to act as his agent in Ontario and upon due application of such person and payment by him of the prescribed fee, the Superintendent shall, if he is satisfied that the applicant is a suitable person to receive a license and intends to hold himself out publicly and carry

on business in good faith as an insurance agent, issue to the applicant a license which shall state in substance that the holder is, during the term of the license, authorized to carry on within Ontario the business of an insurance agent. 1924, c. 50, s. 244 (3); 1926, c. 49, s. 22 (1).

Notice of
appointment
of agent.

(4) Such notice of appointment by an insurer shall be upon a form furnished by the Superintendent and shall state that the appointee has been authorized in writing by the insurer to act as agent in the soliciting of and negotiating for insurance and shall be accompanied by a sworn statement of the appointee on a form furnished by the Superintendent which shall give the name, age, residence and present occupation of the applicant and his occupation for the five years next preceding the date of the notice and particulars of any other employment in which he may be engaged and such other information as the Superintendent may require.

Limitations
of license.

(5) Where the applicant is the appointee of an insurer carrying on in Ontario the business of life insurance, or life and accident insurance, or life and accident and sickness insurance, the license shall expressly limit the authorization of the agent to the class of insurance for which the insurer is licensed; and when the applicant is the appointee of an insurer carrying on in Ontario any class or classes of insurance business other than life insurance, the license shall expressly exclude the business of life insurance, but nothing herein shall prevent the issue to the same applicant of two licenses including all classes of insurance if due application has been made for two licenses.

Notice of
termination
of agency,
suspension
and revivor.

(6) Where the agency, upon notice of which a license is issued, is terminated, notice in writing shall forthwith be given by the insurer to the Superintendent of such termination, with the reason therefor, and thereupon the license shall be *ipso facto* suspended, but such license may be revived subject to the approval of the Superintendent upon filing of notice of a new agency appointment and upon payment of a fee of one dollar.

Failure to
give notice.

(7) An insurer who fails to notify the Superintendent within thirty days of the termination of an agency appointment as required by the preceding subsection shall be guilty of an offence.

Revocation.

(8) A license issued under this section may be revoked by the Superintendent if, after due investigation and a hearing, he determines that the holder of such license (a) has violated any provision of this Act by any act or thing done in respect to insurance for which such license is required; or (b) has made a material mis-statement in the application for such license; or (c) has been guilty of a fraudulent practice; or (d) has demonstrated his incompetency or untrustworthiness to transact the insurance agency business for which such

license has been granted, by reason of anything done or omitted in or about such business under the authority of such license.

(9) In determining the granting or refusal of an application for a license or renewal of license, or the cancellation of any existing license, the Superintendent may, and shall when so requested in writing by the applicant or licensee, nominate an advisory board before which the hearing provided for in the preceding subsection shall be had, on which board there shall be a representative of insurers and a representative of agents, and a representative of the Superintendent, and the decision of the Superintendent rendered after the hearing and on the advice of such board shall be final and binding upon all parties concerned and shall not be subject to appeal. 1924, c. 50, s. 244 (4-9).

Advisory
board to
report on
complaint.

(10) The representative of the Superintendent upon the advisory board shall act as chairman and for the purposes of his duties in connection with the investigation and hearing contemplated by the preceding subsection, shall have the same powers as are vested in the Superintendent by section 4 of this Act. 1926, c. 49, s. 22 (2).

Chairman
of board.

(11) A license issued hereunder shall expire on the 30th day of September next after its issue unless automatically suspended by notice pursuant to subsection 6 hereof or unless revoked or suspended by the Superintendent; but such license may, in the discretion of the Superintendent, be renewed for a succeeding year upon due application upon a form prescribed by the Superintendent giving such information as he may require, accompanied by a certificate of agency appointment of a licensed insurer and payment of a fee of three dollars without requiring anew the detailed information hereinbefore specified.

Term of
license.

Renewal.

(12) The holder of a license under this section as agent for insurance other than life insurance may, during the term and validity of his license, act as agent for any licensed insurer within the limits prescribed by his license and may act as an insurance broker in dealing with licensed insurers without other or additional license.

Authority
of agents.

(13) A collector of insurance premiums who does not solicit application for or the renewal or continuance of insurance contracts or act or aid in negotiating such contracts or the renewal thereof, may carry on such business without a license therefor, provided that the collection fee does not exceed five per centum of any amount collected. 1924, c. 50, s. 244 (10-12).

Licenses not
required,
under what
circum-
stances.
Collectors.

(14) A member of a duly licensed fraternal society or pension fund association other than a salaried employee who receives commission, or a member of a mutual fire, weather or live stock insurance corporation, carrying on business solely

Members of
fraternal
societies and
certain
mutual.

on the premium note plan, may, without a license, solicit persons to become members of such society, association or corporation. 1926, c. 49, s. 22 (3); 1927, c. 59, s. 15.

Salaried
officials,
etc.

(15) A salaried employee who does not receive commissions or an officer of a licensed insurer, or an attorney, or salaried employee of a reciprocal or inter-insurance exchange at which no commission is paid except to such attorney, or an employee of a licensed agent or broker who does not receive commissions and who acts only in the name and on behalf of such licensed agent or broker may, without a license, act for such insurer, exchange, agent or broker in the negotiation of any contracts of insurance or in the negotiation of the continuance or renewal of any contracts which the insurer, exchange, agent or broker may lawfully undertake; provided that in the case of insurers authorized to undertake life insurance, only the officers and salaried employees of the head office who do not receive commissions may so act without a license.

Penalty
where not
licensed.

(16) Every person who assumes to act as an agent without the license required by this section, or while his license as such is suspended, shall be guilty of an offence. 1924, c. 50, s. 244 (14, 15).

Licenses of Insurance Brokers.

Licenses of
insurance
brokers.

257.—(1) The Superintendent may, upon the payment of a fee of ten dollars, issue to any suitable person resident in Canada a license to act in Ontario as an insurance broker to negotiate, continue or renew contracts of insurance other than life insurance or to place risks or effect insurance with any duly licensed insurer or its agent.

Application
to be filed
with Super-
intendent.

(2) The applicant for such license shall file with the Superintendent a written application under oath upon a form provided by the Superintendent in which the applicant shall state his name, age, residence and occupation at the time of making the application, his occupation for the five years next preceding the date of the application and such other information as the Superintendent may require. The applicant shall declare that he intends to hold himself out publicly and carry on business in good faith as an insurance broker and he shall furnish a statement as to his trustworthiness and competency signed by at least three reputable persons resident in Ontario. 1924, c. 50, s. 245 (1, 2).

Superin-
tendent may
issue license.

(3) If the Superintendent is satisfied with the statement and information required by the preceding subsection he shall issue the license applied for, and the license shall expire on the 30th day of September in each year unless sooner revoked or suspended. 1924, c. 50, s. 245 (3); 1925, c. 54, s. 31.

Renewal of
license.

(4) The license may, in the discretion of the Superintendent, be renewed upon payment of the fee of ten dollars for each succeeding year without requiring anew the detailed information hereinbefore specified.

(5) The Superintendent may, for cause shown and after a hearing, revoke the license, or may suspend it for a period not exceeding the unexpired term thereof, and may for cause shown and after a hearing revoke the license while so suspended, and shall notify the licensee in writing of such revocation or suspension and may publish a notice of such revocation or suspension in such manner as he may deem necessary for the protection of the public.

Revocation
or suspension
of
license.

(6) Any person other than a licensed agent who assumes to act as an insurance broker without a license or during a suspension of his license shall be guilty of an offence.

Penalty for
acting with-
out license.

(7) Subject to the provisions of section 260 a broker shall not be presumed to be the agent of the insurer or the agent of the insured by reason of the issue to him of a license under this section. 1924, c. 245 (4-7).

License not
to import
agency.

258. In addition to issuing insurance brokers' licenses giving full authority to the licensee as set forth in the preceding sections, the Superintendent may issue insurance brokers' licenses limiting the authority of the licensee to the extent agreed upon with the applicant and set forth in the license, but in other respects the granting of such licenses and the brokers so licensed shall be subject to this Act. 1924, c. 50, s. 246.

License may
be granted
limiting
authority of
licensee.

Brokers' Licenses for Business with Unlicensed Insurers.

259.—(1) The Superintendent may, upon the payment of a fee of twenty-five dollars, issue to any suitable person resident in Ontario, a license to act as a special insurance broker to negotiate, continue or renew contracts of fire insurance on property in Ontario in insurers not authorized to transact such business in Ontario.

License to
special
insurance
broker.

(2) The applicant for such license shall file with the Superintendent a written application under oath as prescribed by section 257. 1924, c. 50, s. 247 (1, 2).

Application
to be filed
with Super-
intendent.

(3) If the Superintendent is satisfied with the statements and information required, he shall issue the license applied for subject to suspension or revocation in the discretion of the Superintendent, which license shall expire on the 30th day of June in each year unless sooner suspended or revoked. 1924, c. 50, s. 247 (3); 1925, c. 54, s. 32.

Expiration
of license.

(4) The license may, in the discretion of the Superintendent, be renewed for each succeeding year upon payment of a fee of twenty-five dollars without requiring anew the detailed information specified by section 257.

Renewal of
license.

Security to
be filed with
Superintend-
ent.

(5) Every person shall, before receiving such license, execute and deliver to the Superintendent security to the satisfaction of the Superintendent in the sum of not less than five thousand dollars that the licensee will faithfully comply with all the requirements of this Act.

When
licensee
may effect
insurance
with
unlicensed
insurers.

(6) Where sufficient insurance on property in Ontario cannot be obtained at reasonable rates or on the form of contract required by the insured from insurers licensed to do business in Ontario, the person named in such license may effect insurance with unlicensed insurers, but shall in the case of every insurance effected under this section obtain from the insured a signed and dated statement describing the property insured, its location and the amount of insurance required and stating that the insurance cannot be obtained in licensed companies and that the application for such insurance at the stated rate of premium was previously made to and refused by named companies licensed in Ontario. The person named in such license shall, within ten days after the placing of such insurance with unlicensed insurers, submit to the Superintendent a statement setting forth the name of the insured, the property insured and its location, the full names of the unlicensed insurers, and the amount of insurance placed with each and the rate and amount of premium paid to each.

Records to
be kept—
inspection.

(7) Every such licensee shall keep a separate account of insurance effected by him under his license in books in the form prescribed by the Superintendent, which shall be open to inspection by the Superintendent or any officer of the Department.

Monthly
return.

(8) Within ten days after the end of each month every such licensee shall make to the Superintendent a return under oath in the form and manner by him prescribed, containing particulars of all insurances effected under this section by the licensee during such month.

Tax on
premiums.

(9) In respect of all premiums on insurance effected under a license, the licensee shall pay to the Department such taxes as would be payable if such premiums had been received by a licensed insurer, and payment thereof shall accompany the monthly return provided for in the preceding subsection.

Release of
security
given by
licensee.

(10) On it being shown to the satisfaction of the Minister that all insurances effected under this section are no longer in force or have been reinsured, the licensee shall be entitled to a release or cancellation of his security.

Forfeiture
of license.

(11) Every person licensed under this section who contravenes any of the foregoing provisions of this section shall forfeit his license and shall be guilty of an offence. 1924, c. 50, s. 247 (4-11).

Provisions Relating to Agents and Brokers Generally.

260.—(1) An agent or broker shall, for the purpose of receiving any premium for a contract of insurance be deemed to be the agent of the insurer notwithstanding any conditions or stipulations to the contrary. Agent or broker receiving premiums.

(2) This section shall not apply to life insurance. 1924, c. 50, s. 248. Application of section limited.

261. An agent or broker who knowingly procures by fraudulent representations, payment or the obligation for payment of any premium on an insurance policy, shall be guilty of an offence. 1924, c. 50, s. 249. Fraudulent representations.

262. An agent or broker shall be personally liable to the insured on all contracts of insurance unlawfully made by or through him directly or indirectly with any insurer not licensed to undertake insurance in Ontario, in the same manner as if such agent or broker were the insurer. 1924, c. 50, s. 250. Personal liability of agent for unlawful contracts.

Licenses of Insurance Adjusters.

263.—(1) The Superintendent may, upon the payment of a fee of ten dollars, issue to any suitable person a license to act as an adjuster. Licenses of insurance adjusters.

(2) The applicant for such license shall file with the Superintendent a written application under oath upon a form provided by the Superintendent in which the applicant shall state his name, age, residence and occupation for the five years next preceding the date of the application and such other information as the Superintendent may require, and the applicant shall furnish a statement as to his trustworthiness and competency signed by at least three reputable persons resident in Ontario. 1924, c. 50, s. 251 (1, 2). Application to be filed with Superintendent.

(3) If the Superintendent is satisfied with the statements and information required, he shall issue the license which shall expire on the 30th day of June in each year unless sooner revoked or suspended. 1924, c. 50, s. 251 (3); 1925, c. 54, s. 33. License to be in force one year.

(4) A license may, in the discretion of the Superintendent and upon payment of a fee of ten dollars, be renewed for each succeeding year without requiring anew the detailed information hereinbefore specified. Renewal of license.

(5) The Superintendent may, for cause shown and after a hearing, revoke the license, or may suspend it for a period not exceeding the unexpired term thereof, and may, for cause shown and after a hearing, revoke the license while so suspended, and shall notify the licensee in writing of such revocation or suspension. Revocation or suspension of license.

Penalty for acting without license.

(6) Any person who acts as an adjuster without such a license or during a suspension of his license, shall be guilty of an offence. 1924, c. 50, s. 251 (4-6).

Partnership Licenses of Agents, Brokers and Adjusters.

Licenses to partnerships.

264.—(1) Licenses as agents, brokers or adjusters may be issued to partnerships on the conditions hereinbefore specified for the issue of such licenses to individuals except as otherwise provided in this section.

Statement to be filed by each partner.

(2) Each member of the partnership shall file the statement or application and pay the fee required by this Act, including a written request that the license be issued in the name of the partnership. The license may be revoked or suspended as to one or more members of the partnership.

Notice of termination of partnership to be given to Superintendent.

(3) If the partnership is terminated prior to the expiration of the license, the partners shall forthwith give notice to the Superintendent, who shall, thereupon, revoke the license.

Failure to give notice of termination of partnerships.

(4) Any member of a partnership licensed under this section who contravenes any of the provisions hereof, shall be guilty of an offence. 1924, c. 50, s. 252.

Corporation Licenses of Agents, Brokers and Adjusters.

Licenses to corporations.

265.—(1) Licenses as agents, brokers or adjusters may be issued to any corporation which is incorporated expressly for the purpose of acting as an insurance agent, broker or adjuster or for that and other purposes.

When licenses not to be issued.

(2) Licenses as agents or brokers shall not be issued to a corporation whose head office is outside of Canada or if it appears to the Superintendent that the application is made for the purpose of acting as agent or broker wholly or chiefly in the insurance of property owned by the corporation or by its shareholders or members.

Licenses; to what to be subject.

(3) Except as otherwise provided in this section, such licenses, and the corporation and officers of the corporation named in the license, shall be subject to the provisions of this Act with respect to agents, brokers and adjusters.

Officers who may act under license.

(4) The license shall specify the officers who may act thereunder in the name and on behalf of the corporation and every such officer shall file a statement or application and pay the fee required by this Act for individual agents, brokers or adjusters provided that, employees who do not receive commissions and who act only in the name and on behalf of the corporation may so act by authority of the corporation license although not named therein.

Revocation and suspension of license.

(5) A license may be revoked or suspended as to the corporation or as to any officers named therein.

(6) If the principal business of a corporation licensed under this section is not the business of an insurance agent or broker or adjuster, the Superintendent may require from such a corporation such information as he deems necessary in respect to the corporation, its officers and affairs and may make such examination of its books and affairs as he deems necessary for the purposes of this Act.

Superintendent may require information.

(7) Any corporation licensed under this section shall forthwith notify the Superintendent in writing of the dissolution or revocation of the charter of the corporation and upon receipt of such notice the Superintendent shall forthwith revoke the license.

Notice of dissolution of corporation.

(8) Every officer specified in the license who contravenes any of the provisions of this section shall be guilty of an offence and shall be personally liable therefor, although such contravention is committed in the name and on behalf of the corporation, and the corporation shall be liable for any such contravention the responsibility for which cannot be placed upon any such officer. 1924, c. 50, s. 253.

Personal liability of officers.

Provisions Relating to Agents, Brokers and Adjusters Generally.

266. Any person who not being duly licensed as an agent, broker or adjuster, represents or holds himself out to the public as being such an agent, broker or adjuster, or as being engaged in the insurance business by means of advertisements, cards, circulars, letterheads, signs or other methods, or being duly licensed as such agent, broker or adjuster, advertises as aforesaid or carries on such business in any other name than that stated in the license, shall be guilty of an offence. 1924, c. 50, s. 254.

Acting as agent, broker, or adjuster without authority.

267. An agent or broker who acts in negotiating, or renewing or continuing a contract of insurance, other than life insurance, with a licensed insurer, and who receives any money or substitute for money as a premium for such a contract from the insured, shall be deemed to hold such premium in trust for the insurer, and, if he fails to pay the same over to the insurer within fifteen days after written demand made upon him therefor, less his commission and any deductions to which, by the written consent of the company, he may be entitled, such failure shall be *prima facie* evidence that he has used or applied the said premiums for a purpose other than paying the same over to the insurer. 1924, c. 50, s. 255.

Agent to be deemed to hold premium in trust for insurer.

268. No insurer, and no officer, employee, or agent thereof and no broker shall directly or indirectly pay or allow, or agree to pay or allow, compensation or anything of value to any person for placing or negotiating insurance on lives, property or interests in Ontario, or negotiating the continu-

No compensation to be paid by insurer to person not licensed.

ance or renewal thereof, or for attempting so to do, who, at the date thereof, is not a duly licensed insurance agent or broker or a person acting under the authority of subsections 14 and 15 of section 256 and whoever knowingly violates the provisions of this section shall be guilty of an offence. 1924, c. 50, s. 256.

Returns to
Superin-
tendent.

269. Every licensed insurer shall make a return under oath to the Superintendent in such form and at such times as he may require, showing all persons, partnerships and corporations duly authorized as its agents in Ontario, and of persons, partnerships or corporations to whom it has, within such period as the form of return may require, paid or allowed, or agreed to pay or allow, directly or indirectly, compensation for placing or negotiating insurance on lives, property or interests in Ontario, or negotiating the continuance or renewal thereof, or for attempting to do so. 1924, c. 50, s. 257.

Appeal

270. If the Superintendent refuses, suspends or revokes a license applied for by or issued to a broker or adjuster he shall state in writing his reasons therefor and any person who deems himself aggrieved by the decision of the Superintendent may appeal therefrom to the Minister and in case of an appeal the decision of the Superintendent shall not take effect until after the hearing and disposition thereof by the Minister. 1924, c. 50, s. 258.

Limited or
conditional
license.

271. A license may be issued to an agent or adjuster subject to such limitations and conditions as the Superintendent may prescribe. 1926, c. 49, s. 23.

PART XV.

RATES AND RATING BUREAUS.

Interpreta-
tion.

272. In this Part:

"Rating
Bureau."

"Rating bureau" means any association or body incorporated or unincorporated, created or organized for the purpose of fixing or promulgating rates of premium payable upon contracts of insurance in Ontario, or the terms or conditions of such contracts, or for these and other purposes, or which assumes to fix or promulgate such rates, terms or conditions by agreement among the members thereof or otherwise. 1924, c. 50, s. 259.

Filing of con-
stitution,
by-laws,
etc., in
office of
Superinten-
dent.

273.—(1) Every rating bureau shall, forthwith after adoption file in the office of the Superintendent duly certified copies of its constitution, articles of association, and by-laws, and a list of members of such bureaus and their addresses, and thereafter shall file in the office of the Superintendent every amendment, revision or consolidation of its constitution,

articles of association and by-laws, and notice of the admission of new members and the withdrawal of former members, within thirty days after the passing or adoption of such amendment, revision or consolidation, or after the admission or withdrawal of such members. 1924, c. 50, s. 260.

(2) Every rating bureau and every licensed insurer shall make a return under oath to the Superintendent in such form and at such times as he may require, showing every or any schedule of rates fixed, made, or charged by them, together with such further or other information concerning such rates as he deems necessary or desirable. 1925, c. 54, s. 34.

(3) Every rating bureau and every licensed insurer shall give to the Superintendent at least ten days notice of any change in the schedules of rates or rules applicable thereto, filed with the Superintendent pursuant to the preceding subsection, and shall file with the Superintendent amended schedules duly verified under oath showing particulars of all such changes before the effective date thereof.

(4) Any rating bureau or licensed insurer which, having filed its schedules of rates pursuant to this section, fixes, makes or charges any rate or receives any premium which deviates from the schedules of rates fixed and filed with the Superintendent for, and the rules applicable to, any risk or class of risks, shall be guilty of an offence. 1926, c. 49, s. 24.

274. No rating bureau and no insurer authorized to transact the business of insurance within Ontario shall fix or make any rate or schedule of rates or charge a rate which discriminates unfairly between risks within Ontario of essentially the same physical hazards in the same territorial classification, or, if such rate be a fire insurance rate, which discriminates unfairly between risks in the application of like charges or credits or which discriminate unfairly between risks of essentially the same physical hazards in the same territorial classification and having substantially the same degree of protection against fire. 1924, c. 50, s. 261; 1925, c. 54, s. 35.

275.—(1) The Superintendent may on written complaint by an insurer or an insured that discrimination exists or upon such information filed with him as the Superintendent deems sufficient to justify an investigation, give notice in writing to a rating bureau or insurer, requiring such rating bureau or insurer to file with the Superintendent any schedules of rates or particulars showing how any specific rate is made up and any other information which he deems necessary or desirable. 1924, c. 50, s. 262 (1); 1925, c. 54, s. 36; 1926, c. 49, s. 25 (1).

(2) Such rating bureau or insurer shall, within five days after the receipt of the notice, file with the Superintendent the schedules, particulars and other information required.

Issue of
order
prohibiting
rate.

(3) The Superintendent may, within thirty days after the receipt of the information required, make an order prohibiting any rate which, in his opinion, contravenes the provisions of section 274 and directing that the discrimination be removed.

Notice of
order.

(4) The Superintendent shall forthwith deliver to the rating bureau or insurer a copy of such order and reasons therefor and shall cause notice thereof to be published forthwith in the *Ontario Gazette*.

Rating
bureau not
to increase
rate.

(5) No rating bureau or insurer shall remove such discrimination by increasing the rates on any risk or class of risks affected by such order unless it be made to appear to the satisfaction of the Superintendent that such increase is justifiable.

Penalty.

(6) Any rating bureau, insurer or other person failing to comply with any provision of such order shall be guilty of an offence. 1924, c. 50, s. 262 (2-6).

Effect of
order;
appeal.

(7) Any order made under this section shall not take effect for a period of ten days after its date and shall be subject to appeal within that time in the manner provided by section 12 of this Act and in the event of an appeal the order of the Superintendent shall not take effect pending the disposition of the appeal. 1924, c. 50, s. 262 (7); 1926, c. 49, s. 25 (2).

Superinten-
dent to have
access to
books.

276. The Superintendent or any person authorized under his hand and seal of office shall at all times have access to all such books, securities or documents of a rating bureau or insurer as are related to the schedules of rates of the rating bureau or insurer; and any officer or person in charge, possession, custody or control of such books, securities or documents who refuses or neglects to afford such access shall be guilty of an offence. 1924, c. 50, s. 263.

Inquiry by
Superin-
tendent.

277.—(1) The Superintendent may inquire into any question which an insurer, insured or a rating bureau may bring before him with regard to insurance rates fixed by any rating bureau or charged by an insurer and also with regard to any other question arising out of the relationship or proposed relationship of the parties with reference to the insurance in question.

Report of
Superin-
tendent.

(2) The Superintendent shall not make any order pursuant to an inquiry under this section, but the result of such inquiry shall be reported in his annual report. 1924, c. 50, s. 264.

PART XVI.

AMALGAMATION, TRANSFER AND REINSURANCE.

278. In this Part:

Interpretation.

"Reinsurance" means an agreement whereby contracts made in Ontario by a licensed insurer or any class or group thereof are undertaken or reinsured by another insurer either by novation, transfer, assignment or as a result of amalgamation of the insurers. 1924, c. 50, s. 265.

279.—(1) Nothing in this Part shall affect contracts of reinsurance of individual risks made by insurers in the ordinary course of business.

Application.

(2) In the case of the amalgamation of insurers, if one of the contracting insurers is an insurer not incorporated or organized under the law of Ontario, the Superintendent shall not recommend that the agreement be approved by the Lieutenant-Governor in Council as hereinafter provided until it has been established to his satisfaction that the insurers, party to the agreement, have fully complied with the requirements of the law of the legislative authority under which the insurer was incorporated or organized; provided that a certificate of the supervising insurance official appointed by such legislative authority that such insurer has fully complied with the requirements of the law of the said authority, shall be sufficient evidence to the Superintendent of that fact. 1924, c. 50, s. 266.

Amalgamation: compliance with law where incorporated.

280. An agreement for reinsurance shall be evidenced by an instrument in writing setting forth in full the terms and conditions of such reinsurance but no such agreement shall be entered into unless and until the permission of the Superintendent has been obtained and the agreement shall not be binding or effective until approved by the Lieutenant-Governor in Council upon the report of the Superintendent. 1924, c. 50, s. 267; 1925, c. 54, s. 37.

Agreement to be in writing.

281. When any such agreement for reinsurance has been entered into, insurers, party thereto, shall within thirty days from the date of execution of the agreement apply to the Lieutenant-Governor in Council to approve the same by petition filed with the Superintendent. 1924, c. 50, s. 268.

Approval of Lieutenant-Governor-in-Council.

282.—(1) In the case of life insurance, before any such application is made, notice thereof together with:

Notice, etc., to shareholders and policy-holders.

- (a) a statement of the nature and terms of the agreement for reinsurance;
- (b) an abstract containing the material facts embodied in the agreement under which such reinsurance is proposed to be effected; and

- (c) copies of the actuarial or other reports upon which such agreement is founded including a report by an independent actuary approved by the Superintendent;

shall be served on the shareholders or members and on the holders of all policies in Ontario other than industrial policies of each insurer; provided however that the Superintendent may dispense with the service of such documents on the policyholders of the reinsuring insurer.

Service.

(2) Such notice and documents shall be served by being transmitted through the post office directed to the registered or other known address of each such shareholder, member and policyholder and within such period that they may be delivered in the due course of delivery at least thirty days before the day appointed for the hearing of the application.

Service on members of fraternal society.

(3) In the case of fraternal societies party to an agreement for reinsurance, such notice and documents shall be deemed to be served on the members of a fraternal society if published in the official organ or publication, if any, of such society at least thirty days before the day appointed for the hearing of the application.

Inspection of agreement by shareholders and policyholders.

(4) The agreement under which such reinsurance is proposed to be effected shall be open to the inspection of the policyholders and shareholders at the principal offices of the insurers within Ontario for a period of thirty days after the issue of the abstract herein provided for.

Publication of notice in Ontario Gazette

(5) A copy of such notice shall also be published in the *Ontario Gazette* at least thirty days before the application is made. 1924, c. 50, s. 269.

Retiring allowance for officers of fraternal society.

283. In the case of fraternal societies, any such agreement for reinsurance may provide for granting out of the funds of the continuing society to any officer who has been in the service of a society party to such agreement for at least twenty years, and who is more than sixty years of age, and whose services will not be required after such agreement becomes effective, a sum not exceeding the aggregate of his salary or other remuneration for the next preceding three years or, in the alternative, an annual retiring allowance to any such officer during the remaining years of his life not exceeding three-fifths of his average annual salary for the next preceding three years of his service and payable weekly, semi-monthly or otherwise as may be agreed upon. 1924, c. 50, s. 270.

Documents to be filed with Superintendent.

284. Upon the filing of the petition the insurers party to the agreement shall deposit with the Superintendent the following documents, that is to say:

- (a) a certified copy of the agreement for reinsurance;

- (b) a statement of the nature and terms of reinsurance;
- (c) certified copies of the statements of assets and liabilities of the insurers party to the agreement;
- (d) certified copies of the actuarial or other reports upon which the agreement is founded; 1924, c. 50, s. 271 (a-d).
- (e) a declaration under the hands of the president or principal officer and manager or secretary of each insurer that to the best of their knowledge and belief every payment made or to be made to any person whatsoever on account of the said reinsurance is therein fully set forth and that no other payments beyond those set forth have been made or are to be made either in money, policies, bonds, valuable securities or other property by or with the knowledge of any of the parties to the reinsurance; 1924, c. 50, s. 271 (e); 1925, c. 54, s. 38 (1).
- (f) evidence of the service and publication of the notices required by section 282 hereto, if any; 1924, c. 50, s. 271 (f).
- (g) such other information and reports as the Superintendent may require. 1924, c. 50, s. 271 (h).

285. Upon receipt of the petition, the Superintendent shall fix a day for hearing the application and notice of the hearing shall be given in the *Ontario Gazette* at least ten days before the date fixed for the hearing. 1924, c. 50, s. 272. Day of hearing.

286. After hearing the directors, shareholders, members and policyholders and other persons whom he considers entitled to be heard upon the application or giving them an opportunity to be so heard, the Superintendent may recommend that the agreement be approved by the Lieutenant-Governor in Council if he is satisfied that no sufficient objection to the arrangement has been established. 1924, c. 50, s. 273. Recommendation of Superintendent.

287. No such agreement shall be recommended if it appears to the Superintendent that, after the consummation of the reinsurance, an impairment or deficiency will exist in the balance sheet of the continuing or reinsuring insurer when its liabilities (including its capital stock, if any) are calculated according to the provisions of this Act. 1924, c. 50, s. 274. Impairment of assets of combined or continuing insurer.

288.—(1) If, in the case of a fraternal society, it appears to the Superintendent from the statement and reports filed with him, or from any examination or enquiry made pursuant to this Act, that, owing to depletion in membership or otherwise, the reinsurance of its contracts would be in the best Report by Superintendent where re-insurance advisable.

interests of its members, he shall so advise the society and request that the advisability of entering into an agreement for re-insurance be considered.

Special
meeting may
be called.

(2) Where, in the opinion of the governing executive authority of the society, a special meeting of the society is desirable for the purpose of considering the request of the Superintendent, the said governing executive authority of the society may call a special meeting of the supreme legislative body of the society upon such notice as the said governing executive authority may deem reasonable, and as the Superintendent may approve, and such meeting so called shall be deemed to have been regularly constituted notwithstanding any provisions contained in the constitution and laws of the society. 1925, c. 54, s. 39.

SCHEDULE "A."

(Section 78.)

INSURERS.

(Section 23.)

1. License, original and annual renewal thereof:

(1) Mutual benefit societies	\$10 00
(2) Pension Fund associations	50 00
(3) Fraternal societies:	
(a) If the assets of the society do not exceed \$100,000	25 00
(b) If the assets of the society exceed \$100,000 but do not exceed \$500,000	50 00
(c) If the assets of the society exceed \$500,000 but do not exceed \$1,000,000	100 00
(d) If the assets of the society exceed \$1,000,000..	150 00
(4) Reciprocal or inter-insurance exchanges	100 00
(5) Mutual and cash-mutual insurance corporations incor- porated by the province:	
(a) Where the gross amount at risk does not exceed \$1,000,000	25 00
(b) Where the gross amount at risk exceeds \$1,- 000,000, but does not exceed \$5,000,000	50 00
(c) Where the gross amount at risk exceeds \$5,000,000, but does not exceed \$10,000,000	75 00
(d) Where the gross amount at risk exceeds \$10,- 000,000, but does not exceed \$20,000,000	100 00
(e) Where the gross amount at risk exceeds \$20,- 000,000, but does not exceed \$30,000,000	150 00
(f) Where the gross amount at risk exceeds \$30,- 000,000, but does not exceed \$40,000,000	200 00

(g) Where the gross amount at risk exceeds \$40,-
000,000, but does not exceed \$50,000,000 \$250 00

(h) Where the gross amount at risk exceeds \$50,-
000,000 300 00

NOTE.—"Gross Amount at risk" means gross
amount at risk as at the 31st December next
preceding the application for license or renewal thereof.

(6) Insurers not included within sub-items (1) to (5) inclusive:

(a) Where the assets of the insurers do not exceed
\$500,000 \$150 00

(b) Where the assets of the insurers exceed \$500,-
000, but do not exceed \$1,000,000 175 00

(c) Where the assets of the insurers exceed \$1,-
000,000, but do not exceed \$5,000,000 200 00

(d) Where the assets of the insurers exceed \$5,-
000,000, but do not exceed \$10,000,000 250 00

(e) Where the assets of the insurers exceed \$10,-
000,000 300 00

NOTE.—The assets of the insurer as used in
this schedule shall mean if the head office of the
insurer is in Canada, the total gross assets of the
insurer wherever situate, as exhibited by the
balance sheet of the insurer at the end of the last
preceding accounting period of the insurer, and as
issued to the public in Canada, or, if the head office
of the insurer is not in Canada, the equivalent in
Canadian currency at par of exchange of the total
assets of the insurer exhibited by the head office
balance sheet in the currency of the country where
the head office of the insurer is situate.

2. Examining and passing upon applications for initial
license (Section 23):

(1) Mutual benefit societies 10 00

(2) All others 25 00

3. Amendment of license 10 00

4. Order-in-Council withdrawing or transferring deposit
(Sections 42 and 47) 25 00

5. Substitution of securities on deposit (except matured
securities) calculated on the par value of securities
withdrawn (section 40)

Under \$10,000 10 00

\$10,000 and under \$25,000 20 00

\$25,000 and over 25 00

6. Filing annual statements (section 70) 5 00

7. Extension of time not exceeding seven days or any
renewal thereof not exceeding seven days, for filing
annual statement, applications for renewal of license,
or any other document or information required under
the authority of this Act, provided that the Super-
intendent may grant relief from the payment of this
fee in any case in which he thinks for reasons appear-
ing to him to be sufficient, that it should not be
imposed 10 00

8. License, original and annual renewal thereof, to issue contracts of insurance through an underwriters agency; term to expire on the 30th of June in each year (Sec. 76) \$100 00
9. Order-in-Council authorizing bonds for Court purposes (Section 19) 100 00
10. Order-in-Council authorizing society to hold land (Section 73) 10 00

AGENTS.

(Section 256.)

11. Licenses for life insurance, or life and accident insurance, or life and accident and sickness insurance, original or renewal thereof 3 00
12. Licenses for any classes of insurance other than life insurance, original or renewal thereof 3 00

MISCELLANEOUS.

13. Certificate of Superintendent 1 00
14. Copies of or extracts from documents filed with or issued by the Superintendent, per folio of 100 words 10
15. Certified copy of license 2 00
- Where the fee payable for any license exceeds \$15.00 the fee for a period of six months or under shall be one-half of the fee payable for the full term.

O-in-C approved 25th Oct., 1927.

SCHEDULE "B."

PREMIUM NOTE,

(Section 104.)

(Place)

(Date)

In consideration of insurance granted under Policy No.....

I hereby promise to pay theCompany

at.....(place of payment) the sum of.....dollars, as follows:

on.....day of.....19 , in full of cash payment,dollars

— or —

on....day of....19 , 1st instalment of cash payment.....dollars;

on....day of....19 , 2nd instalment of cash payment:....dollars;

on....day of....19 , 3rd instalment of cash payment.....dollars

— and —

upon notice such further sums not exceeding, in the aggregate, the face amount of this note as may be lawfully assessed hereon by the directors of the said Company pursuant to the provisions of *The Insurance Act*.

Any action which may be brought or commenced in a Division Court in respect or on account of this note, or any sum to be assessed thereon, may be brought and commenced against the maker hereof in the Division Court for the division wherein the head office or any agency of the insurer is located.

\$.....

.....
Signature of Insured......
Post office Address.

1924, c. 50, Sched. "B"

SCHEDULE "C."

(Section 245).

No..... Term of license.....to.....

DEPARTMENT OF INSURANCE
ONTARIO.

RECIPROCAL INSURANCE LICENSE.

This is to certify that
being an exchange within the meaning of *The Insurance Act*, has complied with the requirements of the said Act; and the subscribers of the said exchange are hereby licensed and authorized for and during the term beginning on the..... day of.....19....and ending on the..... day of.....19....to exchange reciprocal contracts of indemnity or inter-insurance (*here state class of insurance*).

Superintendent of Insurance.
1924, c. 50, Sched. "C"

CHAPTER 223.

The Loan and Trust Corporations Act.

Interpretation. **1.** In this Act,

"Accountant,"
meaning of.

- (a) "Accountant" shall mean a member of the Institute of Chartered Accountants of Ontario or any person approved by the Dominion Mortgage and Investments Association and the Land Mortgage Companies' Association of the Province of Ontario as being a qualified accountant for the purpose of auditing the books and accounts of corporations under this Act; 1919, c. 42, s. 2.

"Chief
agency."

- (b) "Chief Agency" shall mean the principal office or place of business in Ontario of a corporation which has its head office out of Ontario;

"Corpora-
tion."

- (c) "Corporation" shall include a loan corporation, a loaning land corporation and a trust company;

"Due appli-
cation."

- (d) "Due application" shall include such furnishing of information, evidence and material as shall be required by the Registrar; the payment of the prescribed fees in respect of any application, certificate or document required or issued under this Act; and also the payment to the Treasurer of Ontario of all taxes due and payable by the applicant company under any Act of Ontario;

"Extra-pro-
vincial corpor-
ation."

- (e) "Extra-Provincial Corporation" shall mean a corporation other than one incorporated under the law of Ontario;

"Head office."

- (f) "Head Office" shall mean the place where the chief executive officers of the corporation transact its business;

"Law of
Ontario."

- (g) "Law of Ontario" shall include any law of the former Province of Canada or of Upper Canada, continued as the law of Ontario, or consolidated or incorporated with the law of Ontario;

"Loan cor-
poration."

- (h) "Loan Corporation" shall include every incorporated company, association or society, not being a chartered bank of Canada or an insurance corporation, constituted, authorized or operated for the purpose of lending money, or for that and any other purpose, but shall not include a loaning land corporation or a trust company;

- (i) "Loaning Land Corporation" shall mean a loan company whose powers include the business of buying and selling land; "Loaning Land Corporation."
- (j) "Minister" shall mean the member of the Executive Council under whose direction this Act is administered; "Minister."
- (k) "Paid in," as applied to the capital stock of a corporation or to any shares thereof shall mean the amount paid to the corporation on its shares, not including the premium if any paid on such shares, whether such shares are or are not fully paid up; "Paid in."
- (l) "Paid up," when applied to any share, shall mean a share on which there remains no liability, actual or contingent, to the issuing corporation; "Paid up."
- (m) "Permanent Stock," or "Permanent Shares," shall include all stock or all shares of permanent or fixed capital not liable to be withdrawn from or repaid by the corporation; "Permanent stock." "Permanent shares."
- (n) "Provincial Corporation" shall mean a corporation incorporated under the law of Ontario, and operated under the Act or instrument by virtue of which the corporation became so incorporated; "Provincial corporation."
- (o) "Real Estate" shall include messuages, lands, rents and hereditaments, whether freehold or of any other tenure, and whether corporeal or incorporeal, and leasehold estates, and any undivided share thereof, and any estate, right or interest therein; "Real estate."
- (p) "Registered Corporation" shall mean a corporation registered under this Act; "Registered corporation."
- (q) "Trust Company" shall mean a company constituted or operated for the purpose of acting as trustee, agent, executor, administrator, receiver, liquidator, assignee, guardian of a minor's estate, or committee of a lunatic's estate. R.S.O. 1914, c. 184, s. 2. cls. 1-16. "Trust Company."

INCORPORATION OF LOAN OR LOANING LAND CORPORATION.

2.—(1) An application for the incorporation of a loan corporation or of a loaning land corporation shall be made by petition to the Lieutenant-Governor in Council through the Minister in the prescribed form, and shall be delivered to the Registrar. Application for incorporation.

Notice of application.

(2) The applicants shall for one month next before filing their application with the Registrar publish a notice thereof in the *Ontario Gazette*, and shall also before such filing give the like notice at least once in a newspaper published in the locality in which the head office is to be established.

Contents.

(3) The notice shall state the proposed corporate name, the location of the head office, which shall be in Ontario, the purposes of the corporation, and for what amount of permanent capital stock authorization will be asked, with the number of shares and the par value of the share.

Further information.

(4) The applicants shall furnish such further information as may be required by the Minister or the Registrar.

Application to be accompanied by a declaration.

(5) The application shall be accompanied by the original, or one of the duplicate originals, of a declaration adopted at a general meeting of the promoters, and executed under their respective hands and seals by at least twenty-five persons present at the meeting who are subscribers for shares.

Its contents.

(6) The declaration shall set out the names in full and the address and calling of each of the declarants and shall declare: that the said declarants assembled at _____ on (*naming the place and time*); _____ being chairman, and _____ being secretary of the meeting (*naming them*) did there and then agree to constitute themselves a provisional corporation by the name of (*mentioning the proposed corporate name*) under *The Loan and Trust Corporations Act*, and under the proposed by-laws there and then adopted, and annexed to the declaration; also that the following persons, five in number (*naming them*) were elected provisional directors.

Reference to Registrar and his report.

(7) The Minister may refer the application or any question arising thereunder to the Registrar for a report, and the Registrar shall report thereon. R.S.O. 1914, c. 184, s. 3.

By-laws to accompany declaration.

3.—(1) Three copies of the proposed by-laws shall accompany the declaration, one copy duly certified being annexed thereto. R.S.O. 1914, c. 184, s. 4 (1).

What they shall provide for.

(2) Subject to this Act the by-laws shall make provision for the following matters:—

- (a) The proposed corporate name, and the location of the head office of the corporation;
- (b) The purposes for which the corporation is to be constituted;
- (c) They shall declare that the capital stock of the company consists exclusively of permanent capital stock divided into a stated number of shares each of a stated uniform amount; and shall also declare what respective amounts of such capital

stock are before the commencement of business to be authorized, subscribed, and paid in; with the proviso that no shares shall be issued at a discount, or upon any terms, agreement or understanding that the taker or holder shall be liable for any less amount than the par value of the shares, less the calls paid thereon;

(d) They shall define and regulate the exercise of such general powers of borrowing as are by this Act conferred upon loan corporations and loaning land corporations, and shall declare within what limits such borrowing powers are to be exercised, and whether by issuing debentures or debenture stock or otherwise;

(e) They shall provide for the holding of general meetings, ordinary and special, of the shareholders; shall prescribe the time and place of the ordinary general meetings, of which one at least shall be held in each year, and the notice to be given of ordinary general meetings, and the notice to be given of special general meetings;

(f) They shall provide for the election of directors, prescribe their number, powers, duties, and term of office, and the number necessary to constitute a quorum;

(See also as to term of office, etc., s. 90, et seq.)

(g) They shall prescribe the securities, and the minimum amount thereof, to be taken for the fidelity of the person or persons having custody or control of the funds of the corporation; R.S.O. 1914, c. 184, s. 4 (2), cls. (a-g).

(h) They shall provide for the proper audit, at least yearly, of the books and accounts of the corporation by two or more accountants, who shall not be otherwise employed by the corporation or be otherwise officers thereof; R.S.O. 1914, c. 184, s. 4 (2), cl. (h); 1919, c. 42, s. 3.

(i) They shall require that there shall be mailed or delivered to each shareholder, at least two weeks before the annual meeting, a statement, verified by the auditors, of the assets and liabilities and income and expenditure of the corporation to a date not more than two months before the meeting, such statement to be drawn in accordance with the form from time to time prescribed by the Registrar; 1919, c. 42, s. 4.

By-laws as to mailing or delivery of annual statement to shareholders.

- (j) They shall provide for their amendment by the shareholders in general meeting, after at least thirty days' notice in writing of the particular amendment or amendments proposed has been given to each shareholder and to the Registrar. R.S.O. 1914, c. 184, s. 4 (2), cl. (j).

Stock subscription.

4. A sworn copy of the stock subscription shall also be filed with the Registrar containing such particulars as he may require. R.S.O. 1914, c. 184, s. 5.

Minister may direct amendment of by-laws.

5. On receiving an application for incorporation or registry if the Minister finds in the by-laws of the applicant anything repugnant to this Act or to the law of Ontario he may direct an amendment of the by-laws; and, upon their being amended as directed and returned certified as having been so amended, the application may be proceeded with. R.S.O. 1914, c. 184, s. 6.

Prerequisites to incorporation.

6.—(1) For the purpose of incorporation the applicant shall file with the Registrar an affidavit proving that at least \$300,000 of stock has been subscribed for and taken up *bona fide* by at least twenty-five responsible subscribers, each of the applicants holding at least ten shares in his own right and to his own use; that in the case of trust corporations at least \$100,000 and in other cases at least \$50,000 of such subscribed stock has been paid in cash by the subscribers into a branch in Ontario of some chartered bank of Canada, in trust for the proposed corporation, free from all liability on the part of the proposed corporation or any of the subscribers to make repayment of the same or any part thereof to any person, firm or corporation, and that each subscriber has out of his own money, contributed to the amount so paid in rateably according to the amount of shares subscribed for by him. 1919, c. 42, s. 5.

See Order in Council of 28th October, 1907.

New corporation acquiring assets of existing corporation.

(2) Where the corporation is not to be a trust company and is to be constituted for the purpose of acquiring the assets of one or more existing corporations and the proposed consideration for the transfer of such assets is to consist wholly or in part of shares of the capital stock of the new corporation, the Lieutenant-Governor in Council may dispense to such extent as he may deem proper with the requirements of subsection 1 as to subscription and payment. R.S.O. 1914, c. 184, s. 7 (2).

Par value of share.

7. Subject as hereinafter provided the par value of a share of capital stock shall not be less than \$50 nor more than \$100. R.S.O. 1914, c. 184, s. 8,

8.—(1) All stock and shares in corporations hereafter incorporated shall be fixed, permanent and non-withdrawable. All stock to be permanent.

(2) A corporation which had not on or prior to the 17th day of March, 1900, issued terminating stock or shares shall not make or issue such stock or shares. Unless issued prior to 17th March, 1900.

(3) A corporation not registered on the 1st day of July, 1900, shall not be granted registry if the stock or shares of the corporation consist of or include terminating stock or shares. R.S.O. 1914, c. 184, s. 9. Corporation not registered on 1st July, 1900, not to be registered if any part of its stock is terminating.

9.—(1) A grant of incorporation shall be by letters patent. Letters patent.

(2) The letters patent shall set forth the name under which, and the date at which, the corporation became incorporated; the location of the head office; the amount of stock authorized; and the business to be undertaken by the corporation, distinguishing between the classes of business mentioned in section 122. R.S.O. 1914, c. 184, s. 10. Contents.

10.—(1) A provincial corporation incorporated for purposes or objects within the scope of this Act, whether under a special or general Act, and being at the time of its application a subsisting and valid corporation, may apply for letters patent under this Act; and the Lieutenant-Governor in Council may grant letters patent incorporating the shareholders or members of the corporation as a corporation under this Act. Application for letters patent by existing corporation.

(2) Where an existing corporation applies for the issue of letters patent under the provisions of subsection 1 the Lieutenant-Governor in Council may by letters patent extend the powers of the corporation to such other objects within the scope of this Act as the applicant desires, name the first directors of the new corporation, and give to it the name of the old corporation or any other name. Powers may be extended and new name given.

(3) All rights of creditors against the property, rights and assets of a corporation re-incorporated under the provisions of this section, and all liens upon its property, rights and assets shall be unimpaired by such re-incorporation, and all debts, contracts, liabilities and duties of the original corporation shall thenceforth attach to the new corporation, and may be enforced against it to the same extent as if such debts, contracts, liabilities and duties had been incurred or contracted by it. R.S.O. 1914, c. 184, s. 11. Rights of creditors preserved.

11.—(1) Incorporation may be granted without limitation of time, or for any limited term of years not less than ten. Period.

(2) Where incorporation is granted for a limited term of years the letters patent shall specify the first and the last day of the term. Term to be specified if limited.

Forfeiture of
charter for
non-user.

(3) If a corporation incorporated under the law of Ontario does not go into actual *bona fide* operation within two years after incorporation, or at any time for two consecutive years does not use its corporate powers for the purposes set forth in the Act or instrument of incorporation, such non-user shall *ipso facto* work a forfeiture of the corporate powers except so far as may be necessary for winding up the corporation.

Onus of proof
of user.

(4) In any action or proceeding where such non-user is alleged proof of user shall lie upon the corporation.

Renewal of
terminating
charter.

(5) Where incorporation has been granted for a limited term application may, upon the like notice as is required by section 2, be made on or before the expiry of the term for the renewal or extension of the incorporation, and the incorporation may be renewed or extended by letters patent either without limitation of time or for a limited term. R.S.O. 1914, c. 184, s. 12.

First directors
of the cor-
poration.

12. Where incorporation is granted the provisional directors named in the declaration of the applicants shall be the first directors of the corporation, and shall continue in office until their successors are duly elected. R.S.O. 1914, c. 184, s. 13.

First by-laws
of corporation.

13. The by-laws accompanying the declaration, mentioned in sections 2 and 3, with such amendments thereof as may have been required by the Minister, shall be the first by-laws of the corporation and shall take effect and be in force from the date of the incorporation. R.S.O. 1914, c. 184, s. 14.

TRUST COMPANIES.

Incorporation.

When letters
patent of in-
corporation
may issue.

14.—(1) Letters patent of incorporation of a trust company may issue where it is shown to the satisfaction of the Lieutenant-Governor in Council that, in the locality in which the head office of the proposed company is to be situate, there exists a public necessity for a trust company or for an additional trust company.

Proportion
of stock to
be held in
Ontario.

(2) At all times at least three-fourths of the shares of a company shall be held by persons who are residents of Ontario, or by companies incorporated under the law of Ontario.

Forfeiture
where smaller
proportion so
held.

(3) If at any time it is shown to the satisfaction of the Lieutenant-Governor in Council that less than three-fourths of the shares of the company are so held the letters patent incorporating the company may be revoked under the provisions of section 22.

(4) Letters patent shall not issue unless the Lieutenant-Governor in Council is satisfied that the fitness of the applicants to discharge the duties of a trust company is such as to command the confidence of the public, and that the public convenience and advantage will be promoted by granting to the company the powers applied for. R.S.O. 1914, c. 184, s. 15.

Satisfying
Lieutenant-
Governor of
fitness of
applicants.
O.C. 28th
Oct., 1907.

15. The proceedings leading to incorporation shall be as hereinbefore prescribed for the incorporation of loan corporations. R.S.O. 1914, c. 184, s. 16.

Procedure
for incorpo-
ration.

Powers and Liabilities.

16.—(1) A trust company incorporated under the laws of Ontario shall not have power to borrow money by issuing debentures or debenture stock, but where money is received by the company for the purpose of its being invested by the company, the guarantee by the company of the repayment of the same or of the payment of the interest thereon at such rate as may be agreed upon on fixed days shall not be deemed to be a debenture nor shall the money be deemed to be money borrowed by the company by issuing debentures but to be money received in trust.

Trust com-
panies not
to borrow
on debentures,
etc.

Guarantee
receipts not
to be deemed
debentures.

(2) A trust company incorporated under the law of Ontario shall not have power to take deposits by way of borrowing money and all deposits received by such a trust company shall be subject to the provisions hereinafter contained. 1921, c. 61, s. 2.

Trust com-
panies not
to borrow
by accepting
deposits.

17.—(1) All moneys received by a trust company for guaranteed investment as set out in subsection 1 of section 16, and as deposits as set out in subsection 2 of section 16, and subsection 3 of section 17 shall be invested in or loaned upon such securities only as are authorized by *The Trustee Act*.

Investment
of funds
received on
guarantee
receipts or
for deposit.
Rev. Stat.
c. 150.

(2) Where it is provided by the agreement under which moneys are received by the company for guaranteed investments as mentioned in subsection 1 of section 16 that specific securities shall be allocated in respect thereof, such securities shall be ear-marked and definitely set aside in respect thereof, and in respect of all other moneys received for guaranteed investments as mentioned in subsection 1 of section 16 there shall be ear-marked and definitely set aside in respect thereof securities including loans made upon securities or cash including moneys on deposit with any chartered bank of Canada, and securities including loans made upon securities equal to the full aggregate amount thereof.

Securities
allocated to
guaranteed
investments.

(3) A sworn return shall be made to the registrar quarterly on the 15th days of January, April, July and October in each year, drawn in accordance with the form prescribed

Quarterly
returns as to
guaranteed
investments.

from time to time by the registrar, showing all such securities, loans upon securities and cash, if any, as the same stood at the end of the last preceding month and stating that the same have been ear-marked and definitely set aside in respect of moneys received by the company for guaranteed investment as set out in subsection 1 of section 16. 1921, c. 61, s. 3.

Powers which
may be con-
ferred on trust
companies.

18.—(1) Subject to the provisions of the next preceding three sections, and to the law of Ontario, the letters patent may authorize the company to exercise any or all of the following powers:

Accept
property on
trust.

(a) To take, receive and hold all estates and property, real and personal, which may be granted, committed, transferred or conveyed to the company with its consent, upon any trust or trusts whatsoever not contrary to law, at any time or times, by any person or persons, body or bodies corporate, or by any court in Ontario;

Accept
deposits of
property for
safe keeping.

(b) To take and receive as trustee or as bailee, upon such terms and for such remuneration as may be agreed upon, deeds, wills, policies of insurance, bonds, debentures or other valuable papers or securities for money, jewelry, plate or other chattel property of any kind, and to guarantee the safe keeping of the same;

Act as attor-
ney or agent.

(c) To act generally as attorney or agent for the transaction of business, the management of estates, the collection of loans, rents, interest, dividends, debts, mortgages, debentures, bonds, bills, notes, coupons and other securities for money;

Issue and
countersign
stock certi-
ficates, bonds,
etc.

(d) To act as agent for the purpose of issuing or countersigning certificates of stock, bonds or other obligations of any association or municipal or other corporation, and to receive, invest and manage any sinking fund therefor on such terms as may be agreed upon;

Manage sink-
ing funds.

(e) To accept and execute the offices of executor, administrator, trustee, receiver, liquidator, assignee, or of trustee for the benefit of creditors under any Act of this Legislature, and of guardian of any minor's estate, or committee of any lunatic's estate; to accept the duty of and act generally in the winding up of estates, partnerships, companies and corporations;

Act as exe-
cutor, etc.

Invest trust
funds.

(f) To invest any trust money in the hands of the company in any securities in which private trustees may by law invest trust money, and also in the debentures of any municipal corporation in the Provinces of Manitoba, Saskatchewan, or Alberta,

or in any other province which may be named by the Lieutenant-Governor in Council;

- (g) To guarantee any investment made by the company as agent or otherwise; Guarantee investments.
- (h) To sell, pledge or mortgage any mortgage or other security, or any other real or personal property held by the company, and to make and execute all requisite conveyances and assurances in respect thereof; Sell or mortgage property.
- (j) To make, enter into, deliver, accept and receive all deeds, conveyances, assurances, transfers, assignments, grants and contracts necessary to carry out the purposes of the company, and to promote its objects and business; Make deeds, transfers, etc.
- (k) And for all such services, duties and trusts to charge, collect and receive all proper remuneration, legal, usual and customary costs, charges and expenses. Collect costs, charges and expenses for services.

R.S.O. 1914, c. 184, s. 18 (1).

(2) A trust company may invest or loan any money held by it other than trust money in or upon any of the securities authorized by section 28 of this Act or *The Trustee Act*, and may loan any trust money held by it upon any securities authorized by *The Trustee Act* or upon first mortgages or hypothecs upon real estate in any province in which the company is authorized to carry on business. 1921, c. 61, s. 4, *part*; 1927, c. 60, s. 2. Investment of funds other than trust funds. Rev. Stat. c. 150.

- (3)—(a) A trust company incorporated under the law of Ontario may; and Deposits—power to receive.
- (b) Any other trust company registered under this Act which has capacity to do so under its Act or other instrument of incorporation, may within Ontario and subject to complying with section 17

receive deposits of money repayable upon demand or after notice and bearing interest at such rate as may be agreed upon between the company and depositor and the company shall be entitled to retain the interest and profit resulting from the investment or loaning of said deposit moneys in excess of the amount of interest payable to depositors.

(4) Every trust company receiving deposits in the manner authorized by the next preceding subsection shall be deemed to hold the same as trustee for the depositors and to guarantee repayments thereof and there shall be ear-marked and definitely set aside in respect thereof securities, including loans made upon securities or cash, including money on deposit with any chartered bank of Canada, and securities including loans made upon securities, equal to the full aggregate amount thereof. To be deemed trust moneys and to be guaranteed.

Quarterly
return as
to deposits.

(5) Every trust company receiving deposits in the manner authorized by subsection 3 shall make a sworn return to the registrar quarterly on the 15th days of January, April, July and October in each year, drawn in accordance with the form prescribed from time to time by the registrar, showing the amount of such deposits and showing all securities and cash ear-marked and definitely set aside as provided in subsection 4, and stating that the same were at the date mentioned in such return so ear-marked and definitely set aside and showing the amount of cash on hand and on deposit with any chartered bank of Canada and the amount of debentures, bonds, stock or other securities of or guaranteed by the Dominion of Canada and of or guaranteed by any province of Canada, less any incumbrances thereon and the amount of bonds, debentures and other securities of any municipal corporation in Ontario, less any incumbrances thereon, and the principal amount of any moneys payable to the company on demand, the payment of which is secured by the mortgage or pledge of any of the Government, Government guaranteed or municipal securities, hereinbefore in this subsection mentioned as the said amounts stood at the end of the last preceding month and stating that the same were at the date mentioned in such return, on hand and available for depositors.

Special
register
of deposits.

(6) Every trust company receiving moneys on deposit under the provisions of this section shall keep a special register in the form approved by the registrar, in which shall be entered all sums so received and the names and addresses of the persons from whom received. 1921, c. 61, s. 4, *part*.

Liability,
extent of.

19. The liability of a trust company to persons interested in an estate held by the company as executor, administrator, trustee, receiver, liquidator, assignee, guardian, or committee shall be the same as if the estate had been held by any private person in the like capacity, and the company's powers shall be the same. R.S.O. 1914, c. 184, s. 19.

O.C., 28th
Oct., 1907.

Approval of
company
as executor,
etc.

20.—(1) Where a trust company is authorized to execute the office of executor, administrator, trustee, receiver, liquidator, assignee, guardian or committee, and the Lieutenant-Governor in Council approves of such company being accepted as a trust company for the purposes of the Supreme Court, every court or judge having authority to appoint such an officer may, with the consent of the company, appoint such company to exercise any of such offices in respect of any estate or person under the authority of such court or judge, or may grant to such company probate of any will in which such company is named as an executor; but no company which has issued or has authority to issue debentures or debenture stock, or which has received or has authority to receive deposits, except in the manner authorized by this Act shall be approved. R.S.O. 1914, c. 184, s. 20 (1); 1921, c. 61, s. 5.

Proviso.

(2) A trust company so approved may be appointed to be a sole trustee, notwithstanding that but for this Act it would be necessary to appoint more than one trustee.

(3) A trust company so approved may be appointed to any of the offices mentioned in subsection 1 jointly with another person.

(4) Such appointment may be made whether the trustee is required under the provisions of any deed, will or document creating a trust or whether the appointment is under the provisions of *The Trustee Act* or otherwise.

(5) Notwithstanding any rule or practice or any provision of any Act requiring security it shall not be necessary for the company to give any security for the due performance of its duty as such executor, administrator, trustee, receiver, liquidator, assignee, guardian or committee unless otherwise ordered.

(6) The Lieutenant-Governor in Council may at any time revoke the approval given under this section. R.S.O. 1914, c. 184, s. 20 (2-6).

REVOCATION OF CHARTER.

21.—(1) A corporation shall possess as incidental and ancillary to the powers set out in its letters patent, power to

- (a) establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company, or its predecessors in business, or the dependents or connections of such persons, and grant pensions and allowances, and make payments towards insurance, and subscribe or guarantee money for charitable or benevolent objects, or for any exhibition or for any public, general or useful object.

(2) This section shall apply to and be deemed to validate any death benefit or pension schemes formulated or in existence on the 8th day of April, 1926. 1926, c. 50, s. 2.

22. The charter or powers of a corporation may, at any time, for cause shown to his satisfaction, be amended, suspended or revoked and made void by the Lieutenant-Governor in Council. R.S.O. 1914, c. 184, s. 21.

EXTRA-PROVINCIAL BUSINESS.

23.—(1) Where the existence or operation of a provincial corporation is not by the Act or instrument constituting it, limited in time or area the corporation may, in general meeting of the members, called for that purpose by notice

duly given, pass a by-law authorizing its directors to extend the business of the corporation beyond Ontario, but in compliance with the law of the country to which the business may be so extended; and the directors may give effect to such by-law without being liable or responsible as for any breach of trust in so doing.

Erection or purchase of buildings required for use of corporation in the foreign jurisdiction.

(2) Where, as provided in this section, a provincial corporation carries on business outside of Ontario the corporation may in general meeting of the members, called for that purpose by notice duly given, pass a by-law authorizing the directors to invest the money of the corporation in the erection or purchase of buildings required for the occupation of the corporation in any place where the corporation is so carrying on business and in conformity with the law of the country in which such place is situate. R.S.O. 1914, c. 184, s. 22.

CALLS—LIABILITY OF SHAREHOLDERS.

Calling in instalments.

24.—(1) The directors may call in and demand from the shareholders the amount unpaid on shares by them subscribed or held at such times and places and in such payments or instalments as the special Act, letters patent or this Act, or the by-laws of the corporation require or allow; and interest shall accrue upon the amount of any unpaid call from the day appointed for payment thereof.

Demand to state liability to forfeiture.

(2) The demand shall state that in the event of non-payment the shares in respect of which the call was made will be liable to be forfeited.

Forfeiture of share.

(3) If after the demand any call is not paid within the time and in the manner provided by the special Act, the letters patent, supplementary letters patent or the by-laws, the directors, by resolution to that effect reciting the facts and duly recorded in their minutes, may summarily forfeit any shares whereon such payment is not made, and the same shall thereupon become the property of the company and may be disposed of as, by by-law or otherwise, the company may ordain; but such forfeiture shall not relieve the shareholder of any liability to the company or to any creditor. R.S.O. 1914, c. 184, s. 23.

Liability of shareholders.

25.—(1) Every shareholder, until the whole amount of his shares has been paid up, shall be individually liable to the creditors of the company to an amount equal to that not paid up thereon, but shall not be liable to an action therefor by any creditor before an execution against the company has been returned unsatisfied in whole or in part; and the amount due on such execution, but not beyond the amount so unpaid on such shares, shall be the amount recoverable, with costs, against such shareholder.

(2) Any shareholder may plead by way of defence, in whole or in part, any set-off which he could set up against the company, except a claim for unpaid dividend, or a salary or allowance as a president or a director of the company. R.S.O. 1914, c. 184, s. 24.

LENDING POWERS.

The Contract of Loan.

26.—(1) No borrower, whether he is or is not a shareholder in the corporation, shall be bound by the by-laws or rules thereof unless either the words “subject to the by-laws of the corporation,” or the words “subject to the rules of the corporation,” as the case may be, are printed in conspicuous type on the back, and as part of the indorsement of the mortgage or other security given by him.

When borrower bound by rules.

(2) Although the mortgage or other security is so endorsed a borrower from the corporation who is not a shareholder shall not be subject to the by-laws or rules unless the mortgage or other security expressly stipulates that they shall form part of the contract or obligation entered into by the borrower. R.S.O. 1914, c. 184, s. 25.

Who to be subject to by-laws, etc.

27.—(1) Where any loan or advance is made by a corporation the contract shall be evidenced by a written instrument within or on which all the terms and conditions of the contract shall be clearly set out; and unless so set out no term of, or condition, stipulation, warranty, by-law, resolution, rule or proviso varying or modifying the contract shall be valid or shall be admissible in evidence to the prejudice of the borrower; but nothing in this section shall prevent the application to the contract of the provisions of section 26, or of *The Mortgages Act*; or shall prevent the use in the contract of the short form authorized by *The Short Forms of Mortgages Act*, if such contract is expressed to be in pursuance of the last mentioned statute.

Contract of loan to be by instrument setting out all the terms.

Proviso.

Rev. Stat. c. 140.

Rev. Stat. c. 145.

(2) As against the borrower, whether a shareholder or member or not, the contract shall not be in anywise altered, varied or affected by any by-law, resolution or rule of the corporation subsequently passed or adopted. R.S.O. 1914, c. 184, s. 26 (1, 2).

Contract not to be affected by subsequent by-laws, etc.

(3) The instrument shall state the rate of interest charged and shall fully and clearly state by the payment of what specific sum or sums, at a place and time or times stated, the loan or mortgage debt is to be discharged; and in case the loan or mortgage debt is dischargeable by instalments or periodical payments shall further clearly set out the several amounts of such instalments or periodical payments and the number thereof respectively required to discharge the loan or mortgage debt. R.S.O. 1914, c. 184, s. 26 (3); 1919, c. 42, s. 7.

Instrument to state particulars of payment required to discharge.

Borrower not
liable for
losses or for
impairment
of capital.

(4) No term or condition of the contract of loan, or of any contract or agreement collateral thereto, shall render the borrower liable to contribute for losses of the corporation or to make good any impairment of its capital.

Effect of non-
compliance.

(5) Where the instrument does not comply with the requirements of this section the loan or mortgage debt shall be held to consist of the principal sum or sums actually received by the borrower, less any sum or sums repaid by, or standing to the credit of, the borrower, together with simple interest thereon calculated at the legal rate of interest on such sum or sums of principal for the actual time or times during which the borrower has had the use thereof.

Application
of section.

(6) This section shall apply to every contract of loan made or renewed in Ontario after the 1st day of June, 1904, by any corporation to any borrower on the security of any property, or made or renewed to any borrower elsewhere on the security of property situate in Ontario, and shall have effect as against the lender notwithstanding any stipulation or agreement to the contrary. R.S.O. 1914, c. 184, s. 26 (4-6).

Investments, Holding Land Reserve Fund.

May lend on
certain
securities.

28.—(1) A registered loan corporation and a registered loaning land corporation may lend money on the security of, or purchase or invest in the following:—

Real estate
and life
insurance.

(a) Mortgages, charges, or hypothecs upon real estate in Ontario or in any other country to which the corporation is authorized to extend its business under the provisions of section 23, or mortgages or assignments of such life insurance policies as have at the date of the loan or investment an ascertained cash surrender value admitted by the insurer; R.S.O. 1914, c. 184, s. 27 (1), cl. (a).

Investments
by loan
companies.
Government
bonds.

(b) Any securities of or guaranteed by the United Kingdom of Great Britain and Ireland, the Dominion of Canada or any of the Provinces of Canada or any other government the interest on whose securities has been paid regularly for the previous ten years;

Securities
of banks or
companies.

(c) Debentures, bonds, paid-up stock and other securities, except bills of exchange and promissory notes, of any municipal corporation or school corporation or of any chartered bank or incorporated company, if such bank or company is incorporated by Canada, or by any Province of Canada or by any former province now forming part of Canada. 1919, c. 42, s. 8.

(2) Subject always to the limitations imposed by section 35, any such corporation heretofore so authorized may, notwithstanding the provisions of subsection 1, invest in and lend upon real estate or securities other than those in that subsection mentioned. Powers continued.

(3) Any such corporation may take personal security as collateral for any advance made or to be made or for any debt due to such corporation. Personal security as collateral.

(4) Any such corporation may, with the assent of two-thirds of the shareholders present or represented by proxy at an annual or special general meeting, called with due notice of such proposal, lend upon the security of the debentures, bonds, obligations or paid-up stock of any corporation other than those corporations heretofore in this section mentioned, but the aggregate of all such lending shall not exceed at any one time twenty-five per centum of the paid-in capital of the lending corporation, and where the borrower is a corporation shall not exceed at any one time twenty-five per centum of the paid-in capital of the borrowing corporation. Loans on other classes of security with assent of two thirds of shareholders.

(5) The corporation may do all acts that are necessary for advancing such sums of money, and for receiving and obtaining repayment thereof, and for compelling the payment of all interest accruing due thereon, and the observance and fulfilment of any conditions, annexed to the advance, and for enforcing the forfeiture of any term or property consequent on the non-fulfilment of such conditions, or of conditions entered into for delay of payment. R.S.O. 1914, c. 184, s. 27 (2-5). Power to do acts and to exercise remedies.

29.—(1) On and after the 1st of January, 1920, no corporation shall, Restrictions on amount of investments

(a) except as to securities issued or guaranteed by the Government of Canada or the Government of any Province of Canada or by a municipal corporation in the Province of Ontario, invest money in any one security or make a total investment in any one corporation including the purchase of its stock or other securities, the lending to it on the security of its debentures, mortgages or other assets or any part thereof, of more than fifteen per centum of its own paid-in capital stock and reserve funds; Limit of capital investment in any one corporation.

(b) make any investment the effect of which will be that such corporation will hold more than fifteen per centum of the stock and debentures of any one corporation or incorporated company; Not to exceed 15 per cent. of securities of any corporation.

(c) invest in the stocks, debentures or funds of any corporation, chartered bank or incorporated company which has not paid a dividend of six per centum per annum on its capital stock for the previous three years. Dividend paying corporations.

Not to apply
to certain
companies.

(2) This section shall not apply to an investment in the paid up capital stock of a trust company having its head office in the Province of Ontario if the same has been authorized by an order of the Lieutenant-Governor in Council upon the recommendation of the Registrar. 1919, c. 42, s. 9.

May hold cer-
tain estates
and interests
in land; and
may dispose
of same.

30.—(1) A registered corporation may hold real estate which, having been mortgaged or hypothecated to it, has been acquired by it for the protection of its investment, and real estate conveyed to it in satisfaction of debts previously contracted in the course of its business, and may from time to time sell, mortgage, lease, exchange or otherwise dispose of the same; and may sell or otherwise dispose of as it deems advisable any mortgage or security which it has lawfully acquired.

Limitation
of time for
holding except
in case of
loaning land
corporation.

(2) The corporation, not being a loaning land corporation registered under this Act, shall, subject to the provisions of the next following section, sell any real estate acquired by it under any mortgage, charge or hypothecation, or in satisfaction of any debt, within twelve years after it has been so acquired, otherwise it may be forfeited to His Majesty for the use of Ontario; but no such forfeiture shall be enforced until the expiration of six calendar months after notice in writing to the corporation of the intention of His Majesty to claim such forfeiture.

Powers as
grantor or
grantee,
assignor or
assignee.

(3) The corporation may give receipts, acquittances and discharges, either absolutely and wholly or partially, and may grant or take such deeds, assignments or other instruments as are necessary for carrying any such holding, purchase, exchange or re-sale into effect; and the grantee or assignee in any such instrument shall stand in the place of, and be entitled to, and have all the same rights, powers and remedies, and shall be subject to the same obligations and liabilities as the grantor or assignor would have been entitled to or would have been subject to if the grant or assignment had not been made. R.S.O. 1914, c. 184, s. 28.

Rights of
grantee or
assignee.

Power to hold
real estate for
business.

31. A registered corporation may hold absolutely to its own use and benefit such real estate as is necessary for the transaction of its business, or is acquired or held *bona fide* for building upon or improving for that purpose, and may sell, mortgage or dispose of the same. R.S.O. 1914, c. 184, s. 29.

Power to con-
struct larger
building and
to lease part
thereof.

32. A registered corporation, when so authorized by the letters patent or by the Lieutenant-Governor in Council, may acquire or may construct, on any lands so held, a building larger than is required for the transaction of its business and may lease any part of such building not so required. R.S.O. 1914, c. 184, s. 30.

33.—(1) Except as hereinafter provided a loan corporation incorporated under the law of Ontario shall not make or undertake any investment or expenditure after the passing of this Act, under section 31 or section 32, which will cause the total amount at which the investment is carried on the books of the corporation to exceed fifteen per centum of the paid-up capital and reserve funds of the corporation. 1919, c. 42, s. 10, *part*; 1921, c. 61, s. 6 (1). Limit of amount of investment in buildings for use of company.

(2) Where such a loan corporation has already *bona fide* acquired land for the purpose of making additions, alterations, or improvements to offices or buildings already owned by them, or the erection of new buildings thereon, the loan corporation may with the approval of the Lieutenant-Governor in Council make or undertake investments or expenditures for such purposes exceeding the amount provided for in subsection 1 but the total amount at which the investment is carried on the books of the loan corporation shall not in any event exceed twenty-five per centum of the paid-up capital and reserve funds of the loan corporation. 1919, c. 42, s. 10, *part*; 1921, c. 61, s. 6 (2).

(3) A trust company incorporated under the laws of Ontario shall not make or undertake any investment or expenditure after the passing of this Act under section 31 or section 32 which will cause the total amount at which the investment is carried on the books of the company to exceed twenty-five per centum of the paid-up capital and reserve funds of the company. 1921, c. 61, s. 6 (3).

34. A registered corporation may maintain a reserve fund out of its earnings or other income not required to meet its present liabilities. R.S.O. 1914, c. 184, s. 31. Reserve fund.

Loans to Shareholders upon Shares.

35.—(1) A corporation may pass a by-law prohibiting absolutely the loaning to shareholders upon the security of their shares, or, subject to the limitations contained in this section, may pass a by-law fixing the aggregate amount which may be loaned on such shares, and neither of such by-laws shall be repealed until all liabilities of the corporation are discharged. R.S.O. 1914, c. 184, s. 32 (1); 1919, c. 42, s. 11. Prohibition or limitation of loans upon shares.

(2) Subject to subsection 1 the corporation may lend upon its own paid-up stock to an amount not exceeding at any one time in the aggregate of all such loans ten per centum of the corporation's paid-up stock. Limitation as to loans on its own stock.

(3) No such loan shall exceed eighty per centum of the market price of the stock. R.S.O. 1914, c. 184, s. 32 (2, 3). Margin.

Not to lend
on own
stock.

36. A corporation shall not, except in the manner provided by section 35, lend on its own shares with or without collateral security. R.S.O. 1914, c. 184, s. 33.

*Interest; Payments of Blended Interest and Principal;
Limitation of Mortgagor's Liability for Interest.*

Loans to
directors
and auditors
prohibited.

37. A corporation shall not lend or advance money to any of its directors or auditors or to the wife or child of any director or auditor. 1925, c. 55, s. 2.

Rate of
interest.

R.S.O., 1906,
c. 120, s. 1.

38. Subject to the provisions of the next following section a registered corporation may stipulate for, take, reserve and exact any rate of interest or discount that may lawfully be taken by individuals, and may also receive payment at any time on any loan or advance. R.S.O. 1914, c. 184, s. 34.

No interest
recoverable
in certain
cases
unless the
mortgage con-
tains a
certain
statement.

R.S.C., 1906,
c. 120, s. 9.

39.—(1) Wherever any principal money or interest secured by mortgage of real estate is, by the same, made payable on the sinking fund plan, or on any plan under which the payments of principal money and interest are blended, or on any plan which involves an allowance of interest on stipulated repayments, no interest whatever shall be chargeable, payable or recoverable on any part of the principal money advanced, unless the mortgage contains a statement showing the amount of such principal money and the rate of interest chargeable thereon, calculated yearly or half-yearly, not in advance.

No rate re-
coverable
beyond that
shown in such
statement.

R.S.C., 1906,
c. 120, s. 7.

(2) Wherever the rate of interest shown in such statement is less than the rate of interest which would be chargeable by virtue of any other provision, calculation or stipulation in the mortgage, no greater rate of interest shall be chargeable, payable or recoverable on the principal money advanced than the rate shown in such statement.

No fine al-
lowed on pay-
ments in
arrear which
has the effect
of increasing
the rate of
interest.

Proviso: as
to interest
on arrears of
interest.
R.S.C., 1906,
c. 120, s. 8.

(3) No fine or penalty or rate of interest shall be stipulated for, taken, reserved or exacted on any arrears of principal or interest secured by mortgage of real estate which has the effect of increasing the charge on any such arrears beyond the rate of interest payable on principal money not in arrears; but nothing in this section shall have the effect of prohibiting a contract for the payment of interest on arrears of interest or principal at any rate not greater than the rate payable on principal money not in arrear.

Overcharge
may be re-
covered back.

R.S.C., 1906
c. 120, s. 9.

(4) If any sum is paid on account of any interest, fine or penalty not chargeable, payable or recoverable under the three subsections next preceding such sum may be recovered back, or deducted from any other interest, fine or penalty chargeable, payable or recoverable on the principal.

No further
interest pay-
able after
five years on
certain con-
ditions.

(5) Wherever any principal money or interest secured by mortgage of real estate is not, under the terms of the mortgage, payable till a time more than five years after the date of the mortgage, then if at any time after the expiration

of such five years any person liable to pay or entitled to redeem the mortgage tenders or pays to the corporation entitled to receive the money the amount due for principal money and interest to the time of payment as calculated under the preceding subsections of this section, together with three months' further interest in lieu of notice, no further interest shall be chargeable, payable or recoverable at any time thereafter on the principal money or interest due under the mortgage. R.S.O. 1914, c. 184, s. 35.

40. Section 15 of *The Mortgages Act* and section 15 of *The Mortgages Act* R.S.O. 1914, c. 112 shall apply to all mortgages to loan corporations. R.S.O. 1914, c. 184, s. 36; 1914, c. 2, sched. (29). R.S.C., 1906, c. 120, s. 10. Application of Rev. Stat. c. 140, s. 15 and Rev. Stat. 1914, c. 112, s. 15.

BORROWING POWERS.

41.—(1) Any corporation may with the assent of the Lieutenant-Governor in Council evidenced by letters patent elect to renounce its existing borrowing powers and to accept those conferred by this Act. Alteration of borrowing powers.

(2) Such alteration of borrowing powers shall not prejudice or affect any existing rights of creditors or any obligations entered into by such corporation prior to such assent. R.S.O. 1914, c. 184, s. 37. Rights of creditors preserved.

Loan Corporations and Loaning Land Corporations.

42. Sections 43 to 54 shall apply to corporations incorporated under the law of Ontario or having their head offices in Ontario other than trust companies, and also to all loan corporations borrowing in Ontario by taking deposits or issuing debentures, debenture stock or like obligations, and to all loaning land corporations so borrowing by issuing debentures, debenture stock or like obligations. R.S.O. 1914, c. 184, s. 38. Application of ss. 43 to 54.

43.—(1) No corporation constituted with joint stock capital, unless and until it has a subscribed permanent stock of at least \$300,000 on which at least \$100,000 has been actually paid in and is unimpaired, and no corporation constituted without joint stock capital, unless and until it has a paid up, unimpaired, permanent and non-withdrawable capital of at least \$100,000, shall exercise any of the borrowing powers conferred by this Act. Amount of capital to be subscribed and paid before borrowing.

(2) Where a registered corporation constituted with joint stock capital has subscribed permanent stock of at least \$300,000, on which at least \$100,000 has been actually paid in and is unimpaired, or where a registered corporation constituted without joint stock capital has a paid up, unimpaired, permanent and non-withdrawable capital of at least \$100,000, subject to the limitations and restrictions contained in Borrowing powers.

this Act, the directors, pursuant to powers conferred in that behalf by any by-laws or rules of the corporation passed at any general meeting, called with due notice of such proposed by-laws and rules, may borrow money on behalf of the corporation at such rates of interest, and upon such terms as they from time to time think proper; and may for that purpose, subject as hereinafter provided, receive money on loan or on deposit, other than and in addition to money received in respect of stock and shares of the corporation, and issue debenture stock and terminable debentures, bonds and other obligations, as well as execute mortgages under the seal of the corporation, for sums of not less than \$100 each; or may assign, transfer or deposit by way of equitable mortgage or otherwise, for the sum so borrowed, any of the documents of title, deeds, muniments, securities or property of the corporation, and either with or without power of sale or other special provisions, as they deem expedient. R.S.O. 1914, c. 184, s. 39.

Loan corporations receiving money on deposit.

44.—(1) A loan corporation shall not, without the express consent of the shareholders given at a general meeting called with due notice of the proposal, receive money on deposit, otherwise than in respect of shares or stock of the corporation; and when money is otherwise received on deposit the same shall, for the purposes of this Act, be deemed to be money borrowed by the corporation; and with interest thereon as agreed shall be repayable by the corporation either at a time certain, or upon notice, not being less than thirty days, unless notice, or such notice, is waived.

Other corporations.

(2) A corporation which is authorized to carry on any other business than that of lending money shall not be entitled to receive deposits; but this shall not apply to a loaning land corporation which was authorized to receive deposits by letters patent issued under any former Act and which is now exercising this power.

Ranking of creditors on deposits.

(3) In respect of deposits, creditors shall rank upon the assets of the corporation *pari passu* with the holders of debentures and debenture stock. R.S.O. 1914, c. 184, s. 40 (1-3).

Limit of deposits.

(4) The amount to be received by any corporation entitled as hereinbefore provided to receive deposits shall not at any time exceed an amount equal to twice the aggregate amount of the then actually paid in and unimpaired permanent capital and of the then actual reserve fund of the corporation plus the amount of its cash actually in hand or in any chartered bank to the credit of the corporation and beneficially owned by the corporation and not included in either the permanent capital or reserve fund. R.S.O. 1914, c. 184, s. 40 (4); 1921, c. 61, s. 7.

(5) No dividend or bonus shall be paid or declared either wholly or in part out of the reserve fund which has the effect of diminishing such aggregate below the amount required by this Act for the borrowings of the corporation. R.S.O. 1914, c. 184, s. 40 (5).

45. Every loan company receiving deposits shall make a sworn return to the Registrar quarterly on the 15th days of January, April, July and October in each year, drawn in accordance with the form prescribed from time to time by the Registrar, showing the amount of such deposits and showing the amount of cash on hand and on deposit with any chartered bank of Canada and the amount of debentures, bonds, stock or other securities of or guaranteed by the Dominion of Canada, and of or guaranteed by any province of Canada less any incumbrances thereon and the amount of bonds, debentures and other securities of any municipal corporation in Ontario, less any incumbrances thereon and the principal amount of any moneys payable to the company on demand, the payment of which is secured by the mortgage or pledge of any of the securities hereinbefore in this section mentioned as the said amounts stood at the end of the last preceding month, and stating that the same were at the date mentioned in such return on hand and available for depositors. 1921, c. 61, s. 8.

46.—(1) Debentures shall be for such sums, not being less than \$100, and in such currency as the directors deem advisable, and shall be payable not less than one year, nor more than ten years, from the issue thereof, at such place as may be therein mentioned. R.S.O. 1914, c. 184, s. 41 (1).

(2) The total amount borrowed by a corporation on debentures and other securities and by way of deposits shall not exceed four times the aggregate amount of the then actually paid in and unimpaired permanent capital and of the then actual reserve fund of the corporation, plus the amount of its cash actually on hand or in any chartered bank of Canada, to the credit of the corporation and beneficially owned by the corporation and not included in either the permanent capital or reserve fund provided that the Lieutenant-Governor in Council may, on the report of the Registrar, and upon such terms and conditions as may be prescribed, increase the amount which may be borrowed, to a sum not exceeding eight times the aggregate amount from time to time of such permanent capital reserve fund and cash. 1921, c. 61, s. 9 (1); 1927, c. 60, s. 3.

(3) In the event of a corporation incorporated before the 4th day of May, 1891, availing itself of the provisions of this Act, or having availed itself of the provisions of any Act of Ontario passed after the 3rd day of May, 1891, to enlarge its powers of borrowing money by debentures not-

ing herein shall affect or impair the rights of the holders of debentures issued by such corporation. R.S.O. 1914, c. 184, s. 41 (3).

Deduction to be made in estimating the paid in capital.

47. In ascertaining the extent of the borrowing powers of a corporation all loans or advances to its shareholders upon the security of their shares shall be deducted from the amount of the paid-in capital. R.S.O. 1914, c. 184, s. 42.

Issuing debenture stock.

48. The directors of a registered corporation to which subsection 2 of section 43 applies may, from time to time with the consent of a majority of the shareholders, present in person or represented by proxy, at a general meeting called with due notice of the proposal, issue debenture stock which shall be treated and considered as a part of the debenture debt, authorized by section 46, in such amounts and manner, on such terms, and bearing such rate of interest, and in such currency as the directors from time to time think proper, but so that the amount received as money deposits and borrowed on the security of debentures, mortgages, bonds, or other instruments or debenture stock shall not in the whole exceed the aggregate amount fixed by sections 44, 46 and 47, as the limit of the borrowing powers of the corporation. R.S.O. 1914, c. 184, s. 43.

Rights of holders of debenture stock.

49. The holders of debenture stock shall not in respect thereof have any of the rights of shareholders, but, subject to sections 44 and 50, shall be entitled to the rights and powers of mortgagees of the undertaking to the extent provided in the by-laws of the corporation authorizing such debenture stock, but without the right to require repayment of the principal money paid in respect thereof. R.S.O. 1914, c. 184, s. 44.

Debenture stock, how ranked.

50.—(1) Debenture stock shall rank equally with debentures issued, or to be issued, by the corporation, and the holders thereof shall not be liable or answerable for any debts or liabilities of the corporation.

Ranking of debenture stockholders in respect of interest.

(2) In case of a liquidation of the corporation, or other distribution of its assets, a holder of debenture stock shall for arrears of interest, if any, and for the then present or capitalized value of the future interest annually payable rank *pari passu* with depositors and debenture holders. R.S.O. 1914, c. 184, s. 45.

Register of debenture stock.

51. The corporation shall cause entries of the debenture stock from time to time created to be made in a register, to be known as the Debenture Stock Register, which, in the case of a corporation having its head office in Ontario, shall be kept for that purpose at the head office, wherein shall be entered the names and addresses of the several persons and corporations from time to time entitled to the debenture

stock, with the respective amounts of the stock to which they are respectively entitled; and the register shall, during reasonable business hours of every day, except holidays, be accessible for inspection and perusal by himself or his agent to every debenture holder, mortgagee, bondholder, debenture-stockholder and shareholder of the corporation without the payment of any fee or charge. R.S.O. 1914, c. 184, s. 46.

52.—(1) Debenture stock shall be transferable in such amounts and in such manner as the directors may determine. Transfer of debenture stock.

(2) All transfers thereof shall be registered at the head office. Registry of transfer.

(3) The corporation may have transfer books for the purposes of such debenture stock at such place or places in Canada, in Great Britain and Ireland, or any foreign country in which transfers of the stock may be made; but all such transfers shall be entered in the book to be kept at the head office. R.S.O. 1914, c. 184, s. 47. Transfer books out of Ontario.

53. The corporation shall deliver to every holder of debenture stock a certificate stating the amount of the debenture stock held by him, the rate of interest payable thereon and the terms and conditions to which the stock is subject; and all regulations and provisions for the time being applicable to certificates of shares in the capital stock of the corporation shall apply, *mutatis mutandis*, to certificates of debenture stock. R.S.O. 1914, c. 184, s. 48. Certificates of debenture stock.

54. The holders of debentures of the corporation may, with the consent of the directors, at any time exchange such debentures for debenture stock; and the corporation may from time to time purchase in the open market and, with the consent of the holders thereof, redeem any part of the debenture stock representing money which the directors, by resolution, determine not to be required for the business of the corporation. R.S.O. 1914, c. 184, s. 49. Exchange of debentures for, and redemption of debenture stock.

AMALGAMATION OF CORPORATIONS AND PURCHASE AND SALE OF ASSETS.

Loan Companies and Loan Land Companies.

55. A corporation to which subsection 2 of section 43 applies may, as hereinafter prescribed, unite, merge, amalgamate and consolidate its stock, property, business and franchises with those of any other registered corporation, or may sell its assets to any such corporation which is hereby authorized to purchase the same, or may purchase the assets of any such corporation which is hereby authorized to sell the same, and for the purpose of carrying out such purchase or sale the corporation purchasing shall assume the Power to unite with other corporations and to purchase or sell assets.

liabilities of the corporation selling, and may enter into such bond or agreement of indemnity with the corporation or the individual shareholders thereof, or both, as may be necessary, and may enter into the contracts and agreements necessary to such union, merger, amalgamation, consolidation, sale, purchase or acquisition. R.S.O. 1914, c. 184, s. 50.

Directors may make agreement for amalgamation or for purchase or sale of assets.

56.—(1) The directors of a corporation to which subsection 2 of section 43 applies, and of any other corporation mentioned in section 55, may enter provisionally into a joint agreement under the corporate seal of each of the corporations for the union, merger, amalgamation or consolidation of such corporations, or for the sale or purchase by the one corporation of the assets of the other corporation.

Matters to be specified in agreement.

(2) The agreement shall prescribe the terms and conditions of the proposed transaction, and the mode of carrying the same into effect.

Idem.

(3) If the two corporations are to be merged into one corporation the agreement shall specify the name of the new or of the continuing corporation, and the number of directors and other officers thereof, and shall state who shall be the first directors and officers, the capital stock, the number of shares into which such stock is divided, the par value of the shares and the manner of converting the capital stock of each of the existing corporations into that of the new or continuing corporation.

Other details.

(4) The agreement shall contain such other details as the directors of the several corporations deem necessary to perfect the new organization, and the union, merger, amalgamation and consolidation, and the after management and working thereof, or to complete the terms and mode of payment for the assets of one corporation sold, purchased or acquired by the other.

Consideration.

(5) In any agreement for the purchase and sale of assets, the consideration may consist wholly or in part of partly paid or of paid-up shares of the permanent capital stock of the purchasing corporation.

Agreement to be subject to approval of shareholders.

(6) Such agreement, or if no agreement has been entered into but an offer has been made by a corporation under its corporate seal for the purchase of the assets of another corporation such offer, shall be submitted to the shareholders of each corporation at a meeting thereof to be held separately for the purpose of taking the agreement or the offer into consideration.

Notice of meeting to consider agreement.

(7) Notice of the time and place of the meeting of the corporation in which he holds shares and the objects thereof shall be given by written or printed notice addressed to every shareholder, together with a copy of the proposed

agreement, at his last known post office address or place of residence, and also by a general notice in a newspaper published at the chief place of business of the corporation once a week for six successive weeks.

(8) The like notice, together with two copies of the proposed agreement, shall be delivered to the Registrar at least one month before the date of either of the meetings of shareholders called to consider it. R.S.O. 1914, c. 184, s. 51.

Notice to registrar.

57. At each of the meetings of shareholders the agreement or offer shall be considered, and a vote by ballot taken for the ratification or acceptance, or for the rejection of the same, each share entitling the holder thereof to one vote and the ballots being cast in person or by proxy, and if two-thirds of the votes of all the shareholders of each corporation, representing not less than two-thirds in value of its paid in capital or stock, are for the ratification of the agreement or the acceptance of such offer, that fact shall be certified upon the agreement or offer by the secretary or manager under the corporate seal. R.S.O. 1914, c. 184, s. 52.

Proceedings to ratify agreement.

58. The shareholders who may vote at any such meeting shall be those only whose names are duly entered in the books of the corporation at the date of the first publication of the notice calling the meeting, and they shall vote only upon the shares then standing in their respective names. R.S.O. 1914, c. 184, s. 53.

Who may vote.

59. The Lieutenant-Governor in Council, in the case of a proposed purchase of assets, may dispense with the ratification or acceptance of the agreement or offer by the shareholders of the purchasing corporation where it is shown to his satisfaction that such shareholders, after due notice thereof, have ratified a general resolution or by-law authorizing the purchase of the assets of any loan corporation upon the basis and within the limits specified in such agreement or offer. R.S.O. 1914, c. 184, s. 54.

Dispensing with ratification.

60.—(1) If the agreement is ratified or the offer is accepted at the meeting of the shareholders of each of the corporations, or in the case provided for in the next preceding section at the meeting of the shareholders of the selling corporation, the agreement or offer, with the certificates or certificate thereon, shall be filed with the Registrar.

Ratified agreement to be filed with Registrar for assent.

(2) The Registrar shall submit such agreement or offer for the assent of the Lieutenant-Governor in Council.

Assent of Lieutenant-Governor in Council.

(3) After the assent of the Lieutenant-Governor in Council thereto the agreement or offer shall be deemed to be the agreement and act of union, amalgamation and consolidation

Effect of assent.

of the corporations, or the agreement and deed of purchase and acquisition of the assets of the selling corporation by the purchasing corporation. R.S.O. 1914, c. 184, s. 55.

Certificate
of assent by
Minister.

61.—(1) Upon proof that the foregoing requirements have been duly complied with the Minister shall issue a certificate under his hand and seal certifying the assent of the Lieutenant-Governor in Council and the date thereof, and declaring the purchase and the sale of the assets and the names of the corporations parties thereto, or, in the case of amalgamation, declaring the amalgamation of the corporations, naming them, and the name of the new or of the continuing corporation, together with such other matters, if any, as may appear to him necessary or desirable in the public interest.

Effect
as evidence.

(2) The certificate of the Minister shall for all purposes and in all courts be conclusive evidence of all matters therein certified or declared.

Publication.

(3) The Registrar shall give public notice in the *Ontario Gazette* of the issue of the Minister's certificate.

Registration
of certificate
of assent to
amalgama-
tion, etc.

(4) It shall be sufficient to register a certified copy of the Minister's certificate once for all in each registry division or land titles office in which instruments affecting lands or interests in lands included or intended to be included in the transfer or amalgamation, are registered.

Fee payable
for regis-
tration.

(5) The fee payable for the registration thereof shall be one dollar if the certificate is five folios or under, and for each folio above five, ten cents additional.

Certificate
of Registrar,
registration
of.

(6) Any document under the hand, or purporting to be under the hand, of the Registrar, certifying such document to be or to contain a true copy of the Minister's certificate or of any instrument referred to in such certificate, shall be registered by the Registrar in any registry division, or by the Master or local master of titles upon the same being tendered to him for registration accompanied by the proper fee.

Registration
in General
Register.

(7) The certificate shall be entered in the General Register of the registry division or in the book kept in the land titles office.

Certified
copies of cer-
tificate as
evidence be-
fore Master
of Titles.
Rev. Stat.
c. 158.

(8) Copies so certified of any such certificate or instrument shall be received by the Master of Titles and local masters of titles, under the provisions of *The Land Titles Act*, as conclusive evidence of all matters therein certified or declared.

(9) For the purpose of any instrument required to be registered or filed under *The Bills of Sale and Chattel Mortgage Act*, it shall be sufficient in order to show the transmission of title in respect of any personal property or interest in personal property included, or intended to be included, in a transfer or amalgamation, such as is mentioned in section 60 and this section, if the instrument affecting such property or interests recites the certificate registered as provided in subsection 4 of this section, and states the registry division in which the same is registered and its registration number.

As to Bills
of Sale and
Chattel
Mortgages.

Rev. Stat.
c. 164.

(10) This section shall extend to and include any such certificate or certified copy issued or purporting to have been issued under *The Loan Corporations Act* since the 13th day of April, 1897. R.S.O. 1914, c. 184, s. 56.

Application
of section.

R.S.O. 1897.
c. 205.

62. The Registrar may, by a certificate under his hand and seal, indorsed upon or identifying the agreement or offer mentioned in subsection 6 of section 56, or any counterpart or copy thereof, certify that such agreement or offer has been assented to by the Lieutenant-Governor in Council, and his certificate with a copy of the Order in Council attached shall be *prima facie* evidence of such assent. R.S.O. 1914, c. 184, s. 57.

Evidence of
assent of the
Lieutenant-
Governor in
Council.

63.—(1) In the case of a purchase and sale of assets so assented to the assets of the selling corporation shall become absolutely vested in the purchasing corporation on and from the date of such assent without any further conveyance and the purchasing corporation shall thereupon become and be responsible for the liabilities of the selling corporation.

Assets of
selling cor-
poration to
vest in pur-
chasing cor-
poration.

(2) In dealing with the assets of the selling corporation it shall be sufficient for the purchasing corporation to recite the agreement and the assent of the Lieutenant-Governor in Council thereto, with the date of such assent.

Disposal of
assets by
purchasing
corporation.

(3) No such transfer shall affect the rights of any creditor of the transferring corporation.

Rights of
creditors.

(4) By every such agreement made or purporting to be made under this Act the purchasing corporation shall be deemed to covenant and agree with each creditor of the selling corporation that the purchasing corporation will pay to him the sum in which the selling corporation is indebted to him at such time and place as such sum would have been payable had such agreement not been made.

Privy of
contract be-
tween pur-
chasing cor-
poration and
each creditor
of selling
corporation.

(5) Where the Lieutenant-Governor in Council assents to an agreement for the sale of the assets of a corporation, or to an agreement for the amalgamation of two or more corporations, the selling corporation, or the several corporations

Dissolution
of selling
corporations
and of cor-
porations
amalgamated.

amalgamated, as the case may be, shall, from the date of such assent, be dissolved except so far as is necessary to give full effect to the agreement. R.S.O. 1914, c. 184, s. 58.

Property and rights of both companies vested in new corporation.

64.—(1) In the case of an amalgamation the corporations parties thereto shall, from the date of the assent of the Lieutenant-Governor in Council, be consolidated and amalgamated and be merged in and form one corporation by the name stated in the Minister's certificate, and shall, subject to the law of Ontario, possess all the rights, privileges and franchises of each of the amalgamated corporations.

Business and property vested in new corporation.

(2) From the date of the assent all the business, property, real and personal, and all the rights and incidents appurtenant thereto, all stock, mortgages, or other securities, subscriptions and other debts due on whatsoever account, and other things in action belonging to each of such corporations shall be vested in the new or continuing corporation without further act or deed.

Creditors' rights.

(3) All rights of creditors and liens upon the property of each of the corporations shall be unimpaired by the amalgamation.

Debts and liabilities.

(4) All debts, liabilities and duties of each of the amalgamated corporations shall thenceforth attach to the new or continuing corporation, and may be enforced against it to the same extent as if the same had been incurred or contracted by it. R.S.O. 1914, c. 184, s. 59.

Trust Companies.

Interpretation.
"Fiduciary."
"Instrument."

65.—(1) In this section "Fiduciary" shall include trustee, executor, administrator, assignee, guardian, committee, receiver, liquidator or agent; and "Instrument" shall include every will, codicil, or other testamentary document, settlement, instrument of creation, deed, mortgage, assignment, Act of the Legislature, and a judgment, decree, order, direction and appointment of any court, judge, or other constituted authority.

Sections 55 to 64 to apply to trust corporations.

(2) Sections 55 to 64 shall apply to the purchase and sale of the assets of a trust company by and to another and to the amalgamation of trust companies, such corporations being incorporated under the law of Ontario or having their head offices in Ontario, and registered under this Act.

Trusts to pass to new corporations.

(3) On and from the assent of the Lieutenant-Governor in Council, as provided in subsection 1 of section 61, to the purchase and sale, or to the amalgamation, all trusts of every kind and description, including incomplete or inchoate trusts, and every duty assumed by or binding upon either of the corporations, parties to the purchase and sale, or to

the amalgamation, shall be vested in and bind and may be enforced against the purchasing or new or continuing corporation as fully and effectually as if it had been originally named as the fiduciary in the instrument.

(4) Whenever in any instrument any estate, money or other property, or any interest, possibility or right is intended at the time or times of the publishing, making or signing of the instrument to be thereafter vested in or administered or managed by or put in the charge of the selling corporation or of either of the amalgamated corporations as the fiduciary, the name of the new or continuing corporation shall be deemed to be substituted for the name of the old corporation; and such instrument shall vest the subject-matter therein described in the new or continuing corporation according to the tenor of, and at the time indicated or intended by the instrument, and the new or continuing corporation shall be deemed to stand in the place and stead of the old corporation.

Subject matter of trust to vest in new corporation.

(5) Where the name of the selling corporation or of either of the amalgamated corporations appears as executor, trustee, guardian, or curator in a will or codicil such will or codicil shall be read, construed and enforced as if the new or continuing corporation was so named therein; and it shall, in respect of such will or codicil, have the same status and rights as the selling or amalgamating corporation.

References in will in codicil.

(6) In all probates, administrations, guardianships, curatorships or appointments of administrator or guardian *ad litem* heretofore issued or made by any court of Ontario to the selling corporation or to either of the amalgamated corporations, from which at the date of such assent it had not been finally discharged, the new or continuing corporations shall *ipso facto* be substituted therefor. R.S.O. 1914, c. 184, s. 60.

Duties of old corporation not completed.

SHAREHOLDERS AND DEPOSITORS.

66. Corporate bodies and co-partners may hold shares in any registered corporation. R.S.O. 1914, c. 184, s. 61.

Co-partners and corporate bodies.

67. A person not of the full age of twenty-one years but of the age of fifteen years or upwards may deposit money with a registered loan corporation in his own name, and the same may be repaid to him, and he may give a valid discharge therefor, notwithstanding his minority. R.S.O. 1914, c. 184, s. 62.

Certain minors may make deposits.

EXECUTION OF TRUSTS.

68.—(1) A corporation shall not be bound to see to the execution of any trust, whether express, implied or constructive, to which any share of its stock, or any deposit, debenture, or debenture stock may be subject.

Trusts.

Sufficient discharge.

(2) The receipt of the person in whose name any such share, deposit, debenture or debenture stock stands in the books of the corporation shall be a sufficient discharge to the corporation for any payment made in respect thereof, notwithstanding any trust to which the same may then be subject and whether the corporation has or has not had notice of such trust.

Application of money paid.

(3) A corporation shall not be bound to see to the application of the money paid upon such receipt.

Representatives, guardians, or trustees not to be personally liable.

(4) No person holding shares in the corporation as executor, administrator, guardian, committee of a lunatic, or trustee of or for any estate, trust or person named in the books of the corporation as being so represented by him, shall be personally subject to any liability as a shareholder, but the estate and funds in his hands shall be liable in like manner and to the same extent as the testator, intestate, ward or person interested in such trust fund would be if living and competent to hold the shares in his own name.

Liability of beneficiary.

(5) If the trust is for a living person, not under disability, such person also shall be liable as a shareholder.

Where beneficiary, etc., not named, trustee etc., liable.

(6) If such testator, intestate, ward, lunatic or person so represented is not named in the books of the corporation the executor, administrator, guardian, committee or trustee shall be personally liable in respect of such shares as if he held them in his own name as owner thereof. R.S.O. 1914, c. 184, s. 63.

Power of attorney by company.

69. A corporation incorporated under the law of Ontario may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute on its behalf, deeds to which it is a party in any capacity in any place situate within or without the Province of Ontario; and every deed signed by such attorney, on behalf of the corporation and under his seal, shall bind the corporation and have the same effect as if it were under the common seal of the corporation. 1921, c. 61, s. 10, *part.*

Power for company to have official seal for use abroad.

70.—(1) A corporation incorporated under the law of Ontario may have for use in any territory, district or place not situate in the Province of Ontario an official seal, which shall be a facsimile of the common seal of the corporation, with the addition on its face of the name of every territory, district or place where it is to be used.

Authority to agent to affix seal.

(2) A corporation having such an official seal may, by writing under its common seal, authorize any person appointed for the purpose in any territory, district or place not situate in the Province of Ontario, to affix the same to any deed or other document to which the company is party in any capacity in that territory, district or place.

(3) The authority of any such agent shall, as between the corporation and any person dealing with the agent, continue during the period (if any) mentioned in the instrument conferring the authority, or if no period is therein mentioned, then until notice of the revocation or termination of the agent's authority has been given to the person dealing with him. Duration of agent's authority to bind company.

(4) The person affixing any such official seal shall, by writing under his hand, on the deed or other document to which the seal is affixed, certify the date and place of affixing the same. Certifying date and period of sealing.

(5) A deed or other document to which an official seal is duly affixed shall bind the corporation as if it had been sealed with the common seal of the corporation. 1921, c. 61, s. 10, *part*. Official seal to have same effect as common seal.

EXECUTION CREDITORS; NOMINATION BY INVESTOR OR DEPOSITOR;
 INTESACY; PAYMENTS UNDER MISTAKE;
 TRANSMISSION OF INTEREST.

71.—(1) Any surplus not exceeding \$300 over and above the amount due to the corporation, including costs, derived from the sale under power of sale of any property mortgaged to the corporation, where the mortgagor or his assigns has or have died intestate, shall be personal property, whether the sale took place before or after the death of the mortgagor or person entitled to the equity of redemption. Disposition of proceeds of sale under mortgages.

(2) Where the surplus exceeds \$300 nothing in this section shall prejudice any right or lien of an execution creditor in respect of such excess. R.S.O. 1914, c. 184, s. 64. Rights of execution creditors.

72. To the extent of \$300 the amount standing to the credit of any depositor in a registered corporation shall not, while in the hands of the corporation or while in course of transmission from the corporation, be liable to demand, seizure or detention under legal process as against the depositor or his nominee, assignee, or representative, or as against any person to whom the corporation is by the two next following sections authorized to pay said sum. R.S.O. 1914, c. 184, s. 65. Exemption.

73.—(1) A depositor with a loan corporation having on deposit a sum not exceeding \$300 may, from time to time, by a writing signed by him and deposited with the corporation, nominate any person to receive the money at his death. When depositors may nominate a successor.

(2) Upon receiving an affidavit of the death of the depositor the directors may substitute on the books of the corporation the name of the nominee in the place of the depositor, or may immediately pay to the nominee the amount due to the deceased. R.S.O. 1914, c. 184, s. 66. Substitution of nominee on death of nominator.

Disposition
of funds of
intestate
members.

Rev. Stat.
c. 148.

Payments
by mistake
by the
corporation,
when valid.

74. If a depositor with a loan corporation, having on deposit a sum not exceeding \$300, dies intestate and without making such nomination, the amount due may, without letters of administration being taken out, be paid to the person who appears to the directors to be entitled under *The Devolution of Estates Act* to receive the same, upon receiving an affidavit of the death and intestacy, and that the person claiming is so entitled. R.S.O. 1914, c. 184, s. 67.

75. Where the directors, after the death of a depositor, have paid such sum to the person who at the time appeared to be entitled to the same under the belief that the depositor died intestate without having appointed any nominee the payment shall be valid and effectual with respect to any demand from any other person as next of kin or as the lawful representative of the deceased against the corporation; but the next of kin or representative shall be entitled to recover the amount of such payment from the person who received the same. R.S.O. 1914, c. 184, s. 68.

STATUTORY MEETING.

Statutory
meetings.

76.—(1) Every corporation shall, within a period of not less than one month nor more than three months from the date at which the corporation is entitled to commence business, hold a general meeting of its shareholders which shall be called the statutory meeting.

Report to be
sent to share-
holders.

(2) The directors shall, at least ten days before the day on which the meeting is to be held, forward to every shareholder of the corporation a report certified by not less than two directors of the corporation stating,—

- (a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;
- (b) the total amount of cash received by the corporation in respect of such shares, distinguished as aforesaid;
- (c) an abstract of the receipts and payments of the corporation on capital account to the date of the report, and an account or estimate of the preliminary expenses of the corporation;
- (d) the names, addresses and descriptions of the directors, auditors, if any, manager, if any, and secretary of the corporation; and
- (e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(3) The report, so far as it relates to the shares allotted by the corporation, and to the cash received in respect of such shares, and to the receipts and payments of the corporation on capital account, shall be certified as correct by the auditors, if any, of the corporation. Report to be certified by auditors.

(4) The directors shall cause a copy of the report, certified as by this section required, to be filed with the Registrar forthwith after the sending thereof to the shareholders of the corporation. Report to be filed with Registrar.

(5) The directors shall cause a list showing the names, descriptions and addresses of the shareholders, and the number of shares held by them, respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any shareholder of the corporation during the continuance of the meeting. Lists of shareholders to be produced at meeting.

(6) The shareholders present at the meeting shall be at liberty to discuss any matter relating to the formation of the corporation, or arising out of the report, whether previous notice has been given or not, but no resolution of which notice has not been duly given may be passed. Shareholders may discuss business of company at meeting.

(7) The meeting may adjourn from time to time, and at any such adjourned meeting any resolution of which notice has been duly given, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting. Adjournments

(8) If default is made in filing such report or in holding the statutory meeting, then at the expiration of fourteen days after the last day on which the meeting ought to have been held any shareholder may petition the court for the winding up of the corporation, and the court may either direct that the corporation be wound up or give directions for the report being filed or a meeting being held, or make such other order as may be just, and may order that the costs of the petition be paid by any persons who, in the opinion of the court, are responsible for the default. R.S.O. 1914, c. 184, s. 69. Application to court if default made in holding meeting.

GENERAL MEETINGS OF SHAREHOLDERS.

77.—(1) A general meeting of the shareholders shall be held at least once in each year for the purpose of considering the financial statement of the corporation, and the election of directors and auditors, and the transaction of such other business as is proper at such regular general meeting under the law of Ontario and the by-laws of the corporation. Annual general meeting.

(2) Notice of the time and place of the holding of the annual general meeting of the shareholders shall be delivered, or shall be sent by post to the address of each shareholder so far as the same is known, or, on request, to his proxy Notice of annual meeting.

residing in North America or the United Kingdom; and such notice of the meeting shall be so delivered or sent at least fifteen days previously to the time fixed for holding such meeting, and a copy of the annual statement of the directors shall accompany the notice. R.S.O. 1914, c. 184, s. 70.

Special
general
meetings by
resolution of
directors;

78.—(1) The directors shall have the right at any time by resolution of the board passed in that behalf to call a special general meeting of the shareholders for the transaction of any business specified in such resolution.

or on requi-
sition of
shareholders.

(2) One-fourth part in value of the shareholders of the corporation shall, by requisition delivered to the manager, acting manager, or secretary thereof, have at all times the right to have a special general meeting called by such officer for the transaction of any business specified in such requisition.

Notice re-
quired for
special gen-
eral meeting.

(3) Notice of the holding of every special general meeting of the shareholders, specifying the time and place of the meeting and the business to be transacted thereat, shall be delivered, or shall be sent by registered post, to the address of each shareholder, so far as the same is known, at least ten days before the day appointed for the meeting.

Other business
not to be
transacted
except by
unanimous
consent.

(4) No other business shall be transacted at any such meeting unless all the shareholders are present in person or by proxy and unanimously consent thereto.

Proof of
notice.

(5) Before the business of any special general meeting is proceeded with there shall be produced and read a statutory declaration of the manager, acting manager or secretary of the corporation that the requirements of this section as to notice have been fully complied with.

Minutes.

(6) A copy of the notice so delivered or sent, and of such declaration in relation thereto, shall be entered in the minute book of the corporation as part of the proceedings of the meeting. R.S.O. 1914, c. 184, s. 71.

Penalty.

79. Any director or officer of any provincial corporation wilfully neglecting or omitting to give effect to the requisition mentioned in section 78, or to give the notice of any general meeting required by section 77 or 78 shall be guilty of an offence. R.S.O. 1914, c. 184, s. 72.

Voting power
of share-
holders.

80. At all meetings of shareholders of the corporation a shareholder shall have one vote for each share held by him upon which he is not six months in arrear. R.S.O. 1914, c. 184, s. 73.

Proxies.

81. A shareholder may either vote in person or be represented and vote by a proxy who is a shareholder of the corporation and not six months in arrear. R.S.O. 1914, c. 184, s. 74.

82. The transactions of all general meetings of the corporation and of all meetings of the board of directors shall be entered in a book to be known as the minute book of the corporation. Minute book of corporation R.S.O. 1914, c. 184, s. 75.

BY-LAWS.

83. A meeting of the shareholders, called with due notice thereof, may make such lawful and proper by-laws for the government of the corporation, not repugnant to the provisions of this Act or any other law in force in Ontario, as the majority of the shareholders present in person or by proxy deem meet. Shareholders may make by laws. R.S.O. 1914, c. 184, s. 76.

84. Every by-law shall be reduced to writing and shall have affixed thereto the common seal of the corporation, and shall be receivable in evidence without proof of the seal or of the signature or of the official character of the person or persons appearing to have signed the same, and without further proof thereof. To be sealed. Evidence thereof. R.S.O. 1914, c. 184, s. 77.

85.—(1) The by-laws shall be forthwith recorded in a book to be kept by the corporation for that purpose and to be known as the "By-law Book." By-laws to be recorded.

(2) Such book shall, without the payment of any fee or charge, during reasonable business hours of every day, except holidays, be open for the inspection of any shareholder, depositor, debenture holder, or debenture-stockholder by himself or his agent, and every such person may make extracts therefrom. Right to inspect by-law book. R.S.O. 1914, c. 184, s. 78.

86. Every corporation shall deliver to the Registrar within one month after the passing thereof a certified copy of its by-laws and of every repeal, or addition to, or amendment or consolidation thereof. Copy of by-laws, etc., to be filed with Registrar. R.S.O. 1914, c. 184, s. 79.

87.—(1) Every corporation doing business in Ontario, if required so to do by the Registrar shall furnish satisfactory evidence that any by-law has been duly passed, and is a legal and valid by-law according to the Act or instrument incorporating the company and also that the by-law conforms to the law of Ontario. Return of evidence as to by-laws.

(2) A corporation refusing or failing to furnish such evidence promptly shall be liable to have its registry suspended or cancelled. Refusal to furnish evidence. R.S.O. 1914, c. 184, s. 80.

88.—(1) The shareholders in general meeting may by by-law, of which as proposed notice shall be given to each shareholder with the notice of such meeting, empower the directors to make, amend and repeal by-laws for the corporation. Delegating to directors power to make or amend by-laws.

Confirmation
necessary.

(2) Every such by-law of the directors and every repeal, amendment or re-enactment thereof, unless in the meantime confirmed at a general meeting of the corporation duly called for that purpose, shall have force only until the next annual meeting of the corporation; and in default of confirmation thereat shall, at and from that time, cease to have force; and in that case no new by-law to the same or the like effect or re-enactment thereof shall have any force until confirmed at a general meeting.

By-laws may
be varied.

(3) The corporation may either at a general meeting duly called for that purpose, or at the annual meeting repeal, amend, vary or otherwise deal with any by-law passed by the directors; but no act done or right acquired under any by-law shall be prejudicially affected by any such repeal, amendment, variation, or other dealing. R.S.O. 1914, c. 184, s. 81.

Alteration at
general meet-
ing.

89. At such general meeting the shareholders may, by a like vote, alter or amend such by-laws, and may confirm the same as so altered and amended. R.S.O. 1914, c. 184, s. 82.

BOARD OF DIRECTORS, ITS CONSTRUCTION AND POWERS.

Term of
office.

90.—(1) The term of office of the directors shall not exceed two years.

Number.

(2) Where the term of office is one year only the number of directors shall not be less than five.

Idem.

(3) Where the term of office is two years the number of directors shall be an even number not less than six, and one-half of the directors shall retire annually at the general meeting in rotation, but shall, if otherwise qualified, be eligible for re-election.

Retirement
by lot.

(4) Where the term of office is two years the first elected directors shall at their first meeting determine by lot which of them shall retire at the end of the first year. R.S.O. 1914, c. 184, s. 83.

Ballot.

91.—(1) The election of directors shall be by ballot.

Qualification
of directors.

(2) No person shall be qualified to be a director unless he is of the full age of twenty-one years and is a shareholder holding, in his own right, shares or stock of the corporation, on which at least \$1,000 has been paid in, and is not in arrear in respect of any call thereon.

Majority to
be residents
and British
subjects.

(3) The majority of the directors shall at all times be resident in Ontario and subjects of His Majesty by birth or naturalization.

Not to apply
to next election
of directors.

(4) Where, at the time of the coming into force of this Act, less than a majority of the directors are resident in Ontario and subjects of His Majesty by birth or naturaliza-

tion, the provisions of subsection 3 shall not apply to such corporation until the time fixed for the next general annual meeting.

(5) Where at an election more than the prescribed number of non-residents and aliens are elected, a new election shall forthwith be held to fill all the directorships to which aliens or non-residents have been elected, and so on until the number of non-residents or aliens is reduced to the prescribed number. New election to fill directorships in such case.

(6) The remuneration of directors shall be fixed by the shareholders in general meeting. R.S.O. 1914, c. 184, s. 84. Remuneration. R.S.C. c. 79, s. 127.

92. If at any time an election of directors is not held, or does not take effect at the proper time, the corporation shall not be thereby dissolved, but the election may take place at any general meeting of the corporation duly called for that purpose, and the retiring directors shall continue in office until their successors are elected. R.S.O. 1914, c. 184, s. 85. Provision in case of failure of election.

93. Vacancies occurring in the board of directors may be filled for the unexpired remainder of the term by the board from among the qualified shareholders of the corporation. R.S.O. 1914, c. 184, s. 86. Interim vacancies.

94. In every provincial corporation the directors shall and may lawfully exercise all the powers of the corporation except as to such matters as are directed by law or by the by-laws of the corporation to be transacted at a general meeting thereof and have not been by a general meeting delegated to the directors as provided by section 88. R.S.O. 1914, c. 184, s. 87. Powers of directors.

95. The directors shall from time to time elect from among themselves a president and vice-president, and they shall in all things delegated to them act for and in the name of the corporation, and the concurrence of a majority of the directors present at any meeting shall at all times be necessary to any act of the board. R.S.O. 1914, c. 184, s. 88. President and vice-president.

96. On any question before the board each director shall have one vote, and in the event of an equality of votes the president or presiding officer shall have a second or casting vote. R.S.O. 1914, c. 184, s. 89. Casting vote.

97.—(1) The shareholders of a corporation having more than six directors may, at a general meeting called for that purpose, by resolution of two-thirds of the shareholders present in person or by proxy, authorize the directors to delegate any of their powers to an executive committee consisting of not less than three to be elected by the directors from their number. Executive Committee.

Committee's powers.

(2) A committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed upon them by such resolution or by the directors.

Delegated powers to be recorded in minute book.

(3) Where directors delegate any of their powers to an executive committee the powers so delegated shall be stated in writing and entered in the minute book of the corporation. R.S.O. 1914, c. 184, s. 90.

General powers of directors.

98. Subject to this Act, and to the Act or instrument constituting the corporation and to the by-laws of the corporation, the directors may,—

Use of seal.

(a) use or cause to be used and affixed the seal of the corporation, and may affix or cause it to be affixed to any document or paper which in their judgment may require the same;

Making, etc., calls.

(b) make and enforce calls upon the shares of the respective shareholders;

Forfeiture of shares.

(c) declare the forfeiture of all shares on which such calls are not paid;

Making payments, and entering into contracts.

(d) make any payments and advances of money they may deem expedient which are authorized to be made by or on behalf of the corporation, and enter into all contracts for the execution of the purposes of the corporation, and for all other matters necessary to the transaction of its affairs;

Dealing with property.

(e) generally deal with, sell, exchange, lease and dispose of the lands, property and effects of the corporation in such manner as they deem expedient and conducive to the benefit of the corporation;

Other acts.

(f) do and authorize, assent to or adopt all acts required for the due exercise of any further powers and authorities conferred by this Legislature. R.S.O. 1914, c. 184, s. 91.

By-laws for particular purposes.

99. The directors of any provincial corporation, authorized as provided by section 88, may make by-laws, not contrary to law or to the special Act or to this Act, to regulate,—

Stock.

(a) the allotment of stock, the issue of shares, the making of calls thereon, the payment thereof, the issue and registration of certificates of shares or stock, the forfeiture of shares for non-payment, the disposal of forfeited shares and of the proceeds thereof, the transfer of shares or stock, and subject to section 105 hereof the sub-division of existing shares into shares of smaller amount;

Dividends.

(b) the declaration and payment of dividends;

- (c) subject to the provisions of section 109 the appoint- Officers.
ment, functions, duties and removal of all agents,
officers and servants of the corporation, and their
remuneration;
- (d) the calling of meetings of the directors and the Procedure.
procedure at such meetings;
- (e) the conduct in all other particulars of the affairs of Miscellaneous.
the corporation. R.S.O. 1914, c. 184, s. 92.

100.—(1) Except with the consent of the directors no Payments on
payment on account of capital stock shall be made in advance shares in
of calls thereon. advance of
calls.

(2) In respect of any sum so paid a shareholder shall be Right to
entitled to participate in any dividend declared, but it shall participate
not bear interest and shall not constitute a loan to or a debt in dividends
of the corporation.

(3) The shareholder shall be entitled to have any such To be
advance payment credited to him *pro tanto* as against sub- as against
sequent calls. R.S.O. 1914, c. 184, s. 93. subsequent
calls.

TRANSFER OF SHARES.

101.—(1) If the interest of any person in any share in Proof
the capital stock, or debenture stock, or in any bond, debenture necessary
or obligation of a corporation, not payable to bearer, is on trans-
transmitted in consequence of the death, or bankruptcy, or in- mission of
solvency of such person, or by means other than a transfer shares by
upon the books of the corporation, the directors shall not be death, etc.
bound to allow any transfer pursuant to such transmission to
be entered upon such books, or to recognize such transmission
in any manner until a statutory declaration showing its
nature and signed by the person claiming by virtue thereof,
and also by the former shareholder, if living and competent
to make the same, has been filed with the corporation and
approved by the directors.

(2) If the declaration purports to be so signed and to be Discretion of
made or acknowledged in the presence of a notary public, or directors.
of a judge of a court of record, or of a mayor of any city,
town or borough or other place, or a British consul or vice-
consul, or other accredited representative of the British or
Canadian Government, the directors may, in the absence of
actual notice of a contrary claim, give full credit to the
declaration. R.S.O. 1914, c. 184, s. 94.

(3) If the transmission takes place by virtue of any Transfer of
testamentary act or instrument, or in consequence of an intes- shares, under
tacy, the probate of the will or letters of administration, or letters probate,
testamentary, or other judicial or official document etc., issued
out of
Ontario.
under which the title, whether beneficial or as trustee, or the

administration or control of the personal estate of the deceased shall purport to be granted by any court or authority in the Dominion of Canada or in Great Britain or Ireland, or any other of His Majesty's Dominions or in any foreign country or an authenticated copy thereof or official extract therefrom, shall, together with the declaration, be produced and deposited with the manager, secretary-treasurer or other officer named by the directors for the purpose of receiving the same, and such production and deposit shall be sufficient justification and authority, to the directors for paying the amount or value of any dividend, coupon, bond, debenture, obligation or share or transferring or consenting to the transfer of any bond, debenture or obligation or share in pursuance of and in conformity to such probate, letters of administration or other such document as aforesaid, provided that no such transfer shall be valid until the same has been assented to by the solicitor to the Treasury of Ontario.

Penalty for making transfer without consent.

Rev. Stat. c. 26.

(4) Any corporation allowing such transfer without the said consent shall be liable to the penalty imposed by section 11 of *The Succession Duty Act*. 1917, c. 27, s. 30.

When directors have reasonable doubts as to legality of claim.

102.—(1) Where the directors entertain reasonable doubts as to the legality of any claim to or upon any such share, bond, debenture, obligation, or to or upon any dividend, coupon or the proceeds thereof, they may apply to the Supreme Court, stating such doubt, for an order or judgment adjudicating upon such claim, and awarding such share, bond, debenture, obligation, dividend, coupon or proceeds to the person legally entitled to the same, and the court may restrain any action or proceeding against the corporation, or the directors or officers thereof, for the same subject-matter, pending the determination of the application.

Order of court to be indemnity to company.

(2) If the order or judgment of the court is obeyed the corporation and the directors and officers shall be fully protected and indemnified against all actions, claims and demands in respect of the matters in question in such application and the proceedings thereupon. R.S.O. 1914, c. 184, s. 95.

Restrictions on transfer.

103. Subject to subsection 4 of section 104, no by-law shall be passed which in any way restricts the right of a holder of paid-up shares to transfer the same, but nothing in this subsection shall prevent the regulation of the mode of transfer thereof. R.S.O. 1914, c. 184, s. 96.

When directors' consent required.

104.—(1) No transfer of shares of a provincial corporation, the whole amount whereof has not been paid, shall be made without the consent of the directors.

Their liability.

(2) Where any such transfer is made with the consent of the directors to a person who is not apparently of sufficient

means to fully pay up such shares, subject to subsection 3, the directors shall be jointly and severally liable to the creditors of the company in the same manner and to the same extent as the transferring shareholder, but for such transfer, would have been.

(3) If any director present when any such transfer is allowed, forthwith, or if any director then absent, within twenty-four hours after he becomes aware of such transfer, and is able to do so, enters on the minute book of the corporation his protest against the same, and within eight days thereafter causes such protest to be notified, by registered letter, to the Minister and the registrar, such director shall thereby exonerate himself from such liability.

Relief from liability by entering protest.

R.S.C. 1906, c. 79, ss. 65, 83.

(4) Where a share upon which a call is unpaid is transferred with the consent of the directors, the transferee shall be liable for the call to the same extent and with the same liability to forfeiture of the shares if the call remains unpaid, as if he had been the holder when the call was made, and the transferor shall remain also liable for the call until it has been paid.

Liability where call remains unpaid.

(5) Where the letters patent or the by-laws of a corporation confer that power on the directors they may decline to register a transfer of shares belonging to a shareholder who is indebted to the corporation. R.S.O. 1914, c. 184, s. 97.

Where transferor indebted.

INCREASE OR DECREASE OF CAPITAL STOCK.

105.—(1) The directors of any registered corporation incorporated by or under the law of Upper Canada or of the Province of Canada, or of Ontario, may, at any time after ninety per centum of the permanent capital stock of the corporation has been subscribed and ninety per centum thereof paid in, but not sooner, by by-law provide for the increase of the permanent capital stock to any amount which the directors may consider requisite.

Increase of permanent capital stock.

(2) The directors may at any time by by-law provide for the decrease of the permanent capital stock to any amount not less than \$100,000, which they may consider sufficient.

Decrease of permanent capital stock.

(3) The by-law shall declare the number and par value of the shares of the stock so increased or decreased and provide for the manner in which they are to be allotted, or the rule or rules by which the allotment is to be made.

By-law to declare number and par value of new shares.

(4) The directors may pass a by-law providing upon terms therein stated for the conversion of partly paid up shares into paid up shares of its permanent capital stock.

Conversion of partly paid up shares.

(5) The liability of shareholders to persons who, at the time the stock or shares are so increased, decreased, converted or altered, are creditors of the corporation shall remain as though the stock or shares had not been increased, decreased, converted, or altered.

Rights of creditors preserved.

Copy to
registrar.

(6) A copy of every such proposed by-law shall be delivered to the Registrar at least six weeks before being passed by the directors. R.S.O. 1914, c. 184, s. 98 (1-6).

Notice of by-law to shareholders.

(7) Before submission of the by-law to a meeting of shareholders, as provided in subsection 8, such notice shall be given by publication and otherwise as the Registrar shall direct. R.S.O. 1914, c. 184, s. 98 (7); 1914, c. 2, sched. (30).

Such by-laws relating to stock or shares to be confirmed by Order in Council.

(8) No by-law for, or having the effect of, increasing or decreasing the permanent capital stock or shares of the corporation, whether such stock or shares are or are not subscribed or issued, or for, or having the effect of, sub-dividing such shares or altering the par value of such shares, or altering the liability of any holder of such stock or shares, or converting partly paid-up shares into paid-up shares, shall have any force or validity until it has been duly adopted and ratified by a vote of shareholders present or represented by proxy at a general meeting of the corporation duly called for considering such by-law, and holding not less than two-thirds of the issued capital stock of the corporation represented at such meeting, and has afterwards been confirmed by the Lieutenant-Governor in Council.

When confirmation may be granted.

(9) The Lieutenant-Governor in Council may grant such confirmation, if he is satisfied of the *bona fide* character of the changes provided for in the by-law, unless it appears that the confirmation of the by-law would not be in the public interest.

Varying by-law on confirmation.

(10) With the consent of the corporation, evidenced by a resolution of the directors, the changes provided for in any such by-law may be varied or amended by the confirming order in council, and may be made subject to such conditions as the Lieutenant-Governor in Council may deem proper.

Evidence of confirmation by Lieutenant-Governor in Council.

(11) The confirmation by the Lieutenant-Governor in Council may be evidenced by a certificate of the Minister or by a certified copy of the Minister's certificate in the like manner and with the like effect as provided in sections 61 and 62.

Certificate to be conclusive.

(12) Such certificate shall be conclusive evidence of all matters therein certified or declared, and of the due performance of all matters precedent or preliminary to the granting thereof. R.S.O. 1914, c. 184, s. 98 (8-12).

BOOKS TO BE KEPT BY CORPORATIONS.

Record books to be kept and contents.

106.—(1) Every corporation having its head office in Ontario shall cause a book or books to be kept at such head office by the secretary, or by some other officer specially charged with that duty, wherein shall be kept recorded,—

- (a) a copy of the letters patent or other instrument or Act constituting the corporation, and of any instrument or Act amending or supplementing the same; Copy of constituting instrument.
- (b) all by-laws of the corporation; By-laws.
- (c) the names alphabetically arranged of all persons who at and after the passing of this Act are or shall be holders of shares or stock, with the address and calling of every such person while such shareholder; the amounts paid in and remaining unpaid respectively on the stock of each shareholder; and all transfers of stock in their order as presented to the corporation for entry, with the date and other particulars of each transfer, and the date of the entry thereof; Names of shareholders and their addresses. Payments. Transfers.
- (d) the like particulars respecting holdings and transfers of debenture stock; Debenture stock.
- (e) the name, address and calling of every person who at and after the passing of this Act is or shall be a director of the corporation, with the dates at which he became and ceased to be such director. Names, etc. of directors

(2) Such books shall, without the payment of any fee or charge, during reasonable business hours of every day, except holidays, be kept open for the inspection of shareholders, depositors, and holders of debentures or debenture-stock of the corporation and their personal representatives, and every such person may, by himself or his agent, make extracts therefrom. Books to be open for inspection. Right to make extracts

(3) Every such corporation which neglects to keep such book or books shall be liable to forfeit its registry under this Act; and, if a provincial corporation, shall also be liable to forfeit its corporate franchise and rights. Forfeiture for neglect.

(4) No auditor, director, officer or servant of the corporation shall knowingly make or assist in making any untrue entry in any such book, or shall refuse or neglect to make any proper entry therein. Penalty for false entries.

(5) Any person violating the provisions of this section shall, besides any criminal liability which he may thereby incur, be liable in damages for all loss or injury which any person interested may have sustained thereby. R.S.O. 1914, c. 184, s. 99. Liability for damages.

107.—(1) A register of securities shall be kept by every corporation. Register of securities.

(2) The register of a corporation having its head office in Ontario shall include all securities held by the corporation. Where head office in Ontario.

Other corporations.

(3) The register of any other corporation shall include all the securities held upon or in respect of property in Ontario.

Entry of securities as taken.

(4) Within thirty days after the taking of a security a proper entry, specifying the nature and amount of such security, and the names of the parties thereto, with their proper additions, shall be made in such register. R.S.O. 1914, c. 184, s. 100.

Terminating shares book.

108.—(1) Every loan corporation in which and so long as there are any holders of terminating shares or stock shall keep a book, or books, to be known as the Terminating Shares Book, in which shall be entered the name, address and calling of every such person while such shareholder, the number and amount of shares from time to time taken by him, and his several payments thereon, the interest or profits earned by his shares, also the repayments or the advances, if any, made by the corporation on account of his shares.

Entry of forfeiture.

(2) In any case of forfeiture of shares an entry shall be made thereof, with the date of the forfeiture.

Application of subsecs. 2 to 5 of s. 106.

(3) The provisions of subsections 2 to 5 of section 106 shall apply to the books prescribed by section 107 and this section. R.S.O. 1914, c. 184, s. 101.

AUDIT; STATEMENT TO SHAREHOLDERS.

Annual audit.

109.—(1) The accounts of a corporation shall be examined once at least in every year and the correctness of the balance-sheet shall be ascertained by two or more auditors, who shall be accountants. R.S.O. 1914, c. 184, s. 102 (1); 1919, c. 42, s. 12.

First auditors.

(2) The first auditors of a corporation may be appointed by the directors before the first meeting of the shareholders and shall hold office until the first general meeting.

Appointment of auditors.

(3) Thereafter the auditors shall be appointed by resolution at a general meeting of the corporation and shall hold office until the next annual meeting unless previously removed by a resolution of the shareholders in general meeting.

Auditors may be shareholders.

(4) The auditors may be shareholders in the corporation, but no person shall be eligible as an auditor who is interested otherwise than as a shareholder in any transaction of the corporation, and no director or other officer of the corporation shall be eligible during his continuance in office.

Registrar may appoint.

(5) If an appointment of auditors is not made at any annual meeting the Registrar may, on the application of any shareholder of the corporation, appoint an auditor of the corporation for the current year, and fix the remuneration, if any, to be paid to him by the corporation for his services.

(6) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act, and any auditor may be eligible for reappointment. Directors may fill vacancies.

(7) The directors may, by a two-thirds vote, suspend any auditor for incapacity, misconduct or negligence until the next general meeting of the corporation, and in the event of suspension shall appoint an auditor *ad interim*. Suspension of auditors.

(8) The remuneration of the auditors shall be fixed by the corporation in general meeting, except that the remuneration of any auditors appointed before the first general meeting or to fill any casual vacancy may be fixed by the directors. R.S.O. 1914, c. 184, s. 102 (2-8). Remuneration of auditors

(9) Every auditor of a corporation shall have the right of access at all times to the books and accounts, cash, securities, documents and vouchers of the corporation, and shall be entitled to require from the directors and officers of the corporation such information and explanation as he may require. Auditor's right of access to books.

(10) It shall be the duty of the auditors, once at least, during their term of office, to check the cash and verify the securities of the corporation at the chief office of the corporation, against the entries in regard thereto in the books of the corporation, and, should they deem it necessary, to check and verify in the same manner the cash and securities at any branch or agency. Checking cash and verifying securities

(11) The auditors shall make report to the shareholders,— Report to shareholders.

(a) that they have audited the books for the year ending 31st December and have verified the cash, bank balances and securities of the corporation;

(b) that they have examined the statement and that it agrees with the books of the corporation;

(c) that after due consideration they have formed an independent opinion as to the position of the corporation;

(d) that with their independent opinion so formed and according to the best of their information and the explanations given them they certify that in their opinion the statement sets forth fairly and truly the state of the affairs of the corporation;

(e) that all transactions of the corporation that have come within their notice have been within the powers of the corporation. 1919, c. 42, s. 13.

110.—(1) Every corporation shall once at least in every year, cause to be prepared a general statement of its affairs in the form prescribed by the Registrar from time to time. Annual statement to shareholders.

To state that it is corporation's statement.

(2) Every such statement shall have on the head thereof a printed notice in conspicuous type stating that the statement is the statement of the corporation.

Attesting and verifying.

(3) Every such statement shall be attested by the signature of the president or vice-president and the managing director or some other principal officer of the corporation and shall contain a certificate signed by the auditors certifying as provided in section 109.

To be mailed or delivered to shareholders.

(4) A copy of such statement shall be mailed or delivered to every shareholder of the corporation at least two weeks before the annual meeting without charge.

And to debenture holders and depositors

(5) A copy of such statement shall be mailed or delivered without charge to every debenture holder resident in Canada and depositor of the corporation whose deposits shall exceed \$100, within thirty days after the annual meeting has been held. 1919, c. 42, s. 14.

OFFICERS AND SERVANTS; CUSTODY OF BOOKS AND EFFECTS OF CORPORATION.

Directors to appoint officers.

111. Subject to section 109 the directors shall from time to time appoint such persons as they think proper to be officers, servants or employees of the corporation, grant such salaries and emoluments as they deem fit, and pay the necessary expenses attending the management of the corporation; and shall from time to time appoint such persons as may be necessary for the purposes of the corporation, for the time and for the purpose expressed in the by-laws, and may from time to time discharge such persons, and appoint others in the room of those who retire, die or are discharged. R.S.O. 1914, c. 184, s. 104.

"Manager" and "Managing Director."

112. The secretary or treasurer or secretary-treasurer or other officer of the corporation may be styled "Manager," and when the officer is also a director he may be styled "Managing Director." R.S.O. 1914, c. 184, s. 105.

Certain persons in service of corporation to furnish security.

113. Every officer or other person appointed to any office in anyway concerning the receipt, safe-keeping or proper application of money shall furnish security according to the by-laws of the corporation and to the satisfaction of the directors for the just and faithful execution of the duties of his office, and any person entrusted with the performance of any other service may be required by the directors to furnish similar security. R.S.O. 1914, c. 184, s. 106.

Property in books of account.

114.—(1) The books used by any auditor, officer, collector or agent for verifying or recording money received for the corporation shall be the property of the corporation.

(2) Neither the foregoing persons, nor any solicitor, coun-^{Idem.}sel or other person shall have in or upon these or any other of the books of account or record of the corporation any ownership or proprietary right or any right of lien.

(3) Any person who, in contravention of this section, with-^{Penalty.}draws, withholds or detains any of such books from the possession or control of the directors, or from the receiver or liquidator of the corporation, shall be guilty of an offence. R.S.O. 1914, c. 184, s. 107.

115. Where a person who has been but has ceased to be a ^{After de-}director, manager, auditor, officer, agent, collector, servant ^{cease, bank-}or employee of a corporation, or any other person unlaw-^{ruptcy, etc.,}fully retains possession of any account, books, money, secur-^{of officer,}ities, papers, matters or things which are the property of ^{books, etc., to}the corporation, a judge of the Supreme Court or of a county ^{be delivered}or district court, on application of the corporation or any depositor or shareholder therein or of the Registrar, and upon notice to the person affected, may order that such accounts, books, money, securities, papers, matters and things be forthwith delivered to such person as the judge may direct and in default that the person so retaining possession shall be imprisoned for such period as the judge may direct or until he complies with the direction of the order, and may authorize the sheriff of any county or district in which the same may be found forthwith to seize and take such accounts, books, money, securities, papers, matters and things and deliver the same to the person to whom they have been directed to be delivered. R.S.O. 1914, c. 184, s. 108.

MISAPPLICATION OF MONEYS.

116. In addition to making full restitution and to any ^{Penalty for}liability under the criminal law any director, officer, servant ^{misapplication}or employee of a corporation who diverts or misapplies any ^{of funds.}money subscribed to, received by, or belonging to the corporation shall incur a penalty of not less than \$100 or more than \$2,000, recoverable by the corporation by action in the Supreme Court. R.S.O. 1914, c. 184, s. 109.

ANNUAL STATEMENT TO DEPARTMENT: REGISTRAR'S REPORT.

117.—(1) The managing director, manager or secretary ^{Annual state-}of every registered corporation shall prepare annually on ^{ment to the}the 1st day of January, or within two months thereafter, ^{Registrar.}according to a printed form to be supplied on application to the Registrar, a statement of the financial condition and affairs of the corporation up to the 31st December next preceding. R.S.O. 1914, c. 184, s. 110 (1).

(2) In the case of an extra-provincial corporation the Registrar may accept the statement required by subsection 1 as for the then last fiscal year of such corporation. 1919, c. 42, s. 15.

Certificate
of auditors
on annual
statement.

(3) Such annual statement shall be certified by the auditors of the corporation who shall make an affidavit thereon to the following effect:

(a) That they have examined the statement and that it agrees with the books of the corporation;

(b) That after due consideration they have formed an independent opinion as to the position of the corporation;

(c) That with their independent opinion so formed and according to the best of their information and the explanations given them, they certify that in their opinion the statement sets forth fairly and truly the state of the affairs of the corporation;

(d) That all transactions of the corporation that have come within their notice have been within the powers of the corporation.

Affidavit of
president, etc.

(4) Such annual statement shall also be proved by the affidavit of the president or vice-president and of the managing director, or some other principal officer of the corporation and shall be accompanied with a certified copy of a resolution of the directors showing that the same had been adopted by them.

Time for filing
with Registrar

(5) Such annual statement shall be filed with the Registrar on or before the 1st day of March then next ensuing.

Extending
time for
filing of
statement.

(6) On sufficient cause shown and upon payment of the prescribed fee, the Registrar may by writing under his hand and seal, before or after the 1st of March, extend the time for the filing of the statement. 1919, c. 42, s. 16.

Penalty for
failure to
file statement
or supply
information.

(7) A corporation which does not file its statement as required by this section, or make prompt and explicit answer to any inquiries then or at any time put by the Registrar touching its contracts, finances, stock, shares, securities, obligations, by-laws or books or, if required, produce for examination its books, records, securities, accounts, and vouchers shall be liable to suspension, cancellation, or non-renewal of registry, and shall incur a penalty of \$50 for each day of default, but not exceeding in the whole \$1,000. R.S.O. 1914, c. 184, s. 110 (4).

What required
in case of an
extra-provin-
cial corpora-
tion not bor-
rowing monies
in Ontario.

(8) Where it is made to appear to the Registrar that an extra-provincial corporation does not borrow monies in Ontario by the sale of its bonds, debentures or other securities or by accepting deposits or other monies for investment and does not exercise in Ontario any of the powers of a trust corporation

other than the loaning of money in Ontario, the Registrar may direct that the provisions of this section shall not apply to such corporation in which case such corporation shall make such returns and give such information as the Registrar shall from time to time require. 1919, c. 42, s. 17.

(9) With the statement the corporation shall file a certified copy of any statement furnished to shareholders during the year then ended. R.S.O. 1914, c. 184, s. 110 (6). Copy of periodical statement or statements.

118.—(1) The Registrar shall prepare for the Minister from statements filed by the corporations and from any inspection or enquiries made, an annual report, showing particulars of the business of each corporation as ascertained from such statement, inspection and enquiries and such report shall be printed and published forthwith after completion. Annual report.

(2) In his annual report the Registrar shall allow as assets only such of the investments of the several corporations as are authorized by this Act or by their Acts of incorporation or by the general Acts applicable to such investments. Only authorized investments allowed as assets.

(3) In his said report the Registrar shall make all necessary corrections in the annual statements made by the corporations herein provided and shall be at liberty to increase or diminish the assets or liabilities of such corporations to the true and correct amounts thereof as ascertained by him in the examination of their affairs at the head office or any branch thereof or otherwise. Corrections in annual statements by Registrar.

(4) If it appears to the Registrar or if he has any reason to suppose from the statements prepared and delivered to him by the corporations or otherwise, that the value placed by any corporation upon the real estate owned by it or any parcel thereof, is too great; or that the amount secured by mortgage or hypothec upon any parcel of real estate, together with interest due and accrued thereon is greater than the value of such parcel or that such parcel is not sufficient for such loan and interest; or that the value of any investments of the funds of the corporation or of its trust funds is less than the amount of the value of the investments shown in the books of the corporation; he may either require such corporation to secure an appraisement of such real estate or other security by one or more competent valuers or may himself procure such appraisement at the expense of the corporation and if it is made to appear that the value of such real estate or other security held, is less than the amount at which it is carried on the books of the corporation or is not adequate security for the loan and interest, he may write off such real estate, loan and interest, or investment, a sum sufficient to reduce the book value of the same to such amount as may fairly be realizable therefrom, such amount in no case to exceed the appraised value, and may insert such reduced amount in his said report. Appraisement of over-valued real estate.

Any corporation may be required to dispose of unauthorized investments.

(5) The Registrar may request any corporation to dispose of and realize any of its investments acquired after the 14th day of April, 1925, and not authorized by this Act, and the corporation shall within sixty days after receiving such request absolutely dispose of and realize the said investments, and if the amount realized therefrom falls below the amount paid by the corporation for the said investments, the directors of the corporation shall be jointly and severally liable for the payment to the corporation of the amount of the deficiency; provided that if any director present when any such investment is authorized does forthwith, or if any director then absent does, within twenty-four hours after he becomes aware of such investment and is able to do so, enter on the minutes of the board of directors his protest against the same, and within eight days thereafter gives notice of his protest by registered letter to the Registrar, such director may, thereby, and not otherwise, exonerate himself from such liability. 1925, c. 55, s. 3.

Representations that standing of corporation is vouched for by Registrar.

119.—(1) No corporation shall under the penalty of becoming disentitled to registry or of having its registry suspended or cancelled make, print, publish, circulate, authorize or be a party or privy to the making, printing, publishing or circulating of any statement or representation that its solvency or financial standing is vouched for by the Registrar or that the publication of its statement in his report is a warranty or representation of the solvency of the corporation, or of the truth or accuracy of such statement in any particular.

Penalty.

(2) Any director, auditor, officer, servant, employee or agent of a corporation who makes or uses or authorizes or is party or privy to the making or using of any such statement or representation shall be guilty of an offence. R.S.O. 1914, c. 184, s. 112.

REGISTRATION OF CORPORATIONS.

Appointment of Registrar and assistants.

120.—(1) There shall be a Registrar and an Assistant Registrar who shall be appointed by the Lieutenant-Governor in Council.

Assistant Registrar, duties of.

(2) The Assistant Registrar shall perform the duties of the Registrar in the case of the latter's absence or illness, or of a vacancy in the office of Registrar, and shall also perform such other duties as shall be assigned to him by the Lieutenant-Governor in Council, by the Minister or by the Registrar.

Actions against Registrar.

(3) Without the leave of the Attorney-General, no action or proceeding shall be brought or taken against the Registrar or Assistant Registrar for anything done or omitted in the performance, or intended or supposed performance, of his duty under this Act. R.S.O. 1914, c. 184, s. 113.

121. The Registrar shall have a seal of office, which shall Official seal. bear upon its face the words "Registrar of Loan Corporations." R.S.O. 1914, c. 184, s. 114.

122.—(1) The Registrar shall keep:—

Registers.

(a) A register to be called "The Loan Companies' Register," wherein shall be recorded the names of such loan corporations as are from time to time entitled to registry, whose powers do not include the business of buying and selling land, or that of a trustee, executor, administrator, guardian, liquidator, receiver or assignee; Loan Companies' Register.

(b) A register to be called "The Loaning Land Companies' Register," wherein shall be entered the names of such loaning land corporations as are from time to time entitled to registry, whose powers include the business of buying and selling land, but not that of a trustee, executor, administrator, guardian, liquidator, receiver or assignee; Loaning Land Companies' Register.

(c) a register to be called "The Trust Companies' Register," wherein shall be entered the names of such trust companies as are from time to time entitled to registry, whose powers include the business of a trustee, executor, administrator, guardian, liquidator, receiver or assignee, but do not include that of buying and selling land as beneficial owner, and, subject to subsection 3, do not exceed the powers which may be given to trust companies under this Act. Trust Companies' register.

(2) A corporation shall not be registered on more than one of such registers, nor transact or undertake business in Ontario other than the business for which it is registered. No corporation to be registered on more than one register.

(3) Nothing in this section shall diminish the powers conferred on any trust company by or under the authority of any other Act of Ontario, nor shall the possession of powers so conferred debar it from registry on the Trust Companies' Register. R.S.O. 1914, c. 184, s. 115. Special Acts as to trust companies not affected.

(4) No trust company shall be registered to transact business in this Province which has not a paid-up capital of at least \$100,000. 1918, c. 20, s. 35. Paid-up capital required before registration of trust company.

123.—(1) The duty of determining, distinguishing and registering those corporations which under this Act are required to be registered and are entitled to registry, and of granting registry accordingly, shall devolve upon the Registrar subject to appeal as hereinafter provided. Duties of Registrar.

(2) For the purposes of his duties the Registrar may require to be made, or may take and receive affidavits or depositions, and may examine witnesses upon oath. Power to require evidence.

Employment
of steno-
grapher.

(3) The evidence and proceedings in any matter before the Registrar may be reported by a stenographer who has taken an oath before the Registrar faithfully to report the same. R.S.O. 1914, c. 184, s. 116.

Transfer of
papers.

124. After the issue of letters patent to any corporation required or authorized to register under this Act, the Provincial Secretary shall transfer all papers in his Department connected with such company to the office of the Registrar. R.S.O. 1914, c. 184, s. 117.

Applications
for initial
registry.

125.—(1) Applications for initial registry shall be made according to a form to be supplied by the Registrar, and the applicant shall deliver to the Registrar the application duly completed, together with such evidence as the form requires.

Material to be
furnished.

(2) The applicant shall, if required, furnish such further information, material and evidence, and give such public notice of the application as the Registrar may direct.

Financial
statement to
accompany
application.

What state-
ment shall
show.

(3) With the application the applicant shall file a statement in such form as may be required by the Registrar, of the financial condition and affairs of the corporation on the 31st day of December next preceding, or up to the usual balancing day of the corporation, if such balancing day is not more than twelve months before the filing of the statement, and the statement shall be signed and verified as prescribed by section 117. R.S.O. 1914, c. 184, s. 118.

Registration
of extra
provincial
corporations.

126.—(1) Where a corporation applying for registry has its head office elsewhere than in Ontario the application shall be accompanied by a power of attorney from the corporation to an agent or agents resident in Ontario.

Execution
of power of
attorney.

(2) The power of attorney shall be under the seal of the corporation, and shall be signed by the president and secretary or other proper officers thereof in the presence of a witness who shall make oath as to the due execution thereof.

Authenti-
cation.

(3) The official positions in the corporation held by the officers signing such power of attorney shall be verified by the oath of some person cognizant of the facts.

Contents of
power of
attorney.

(4) The power of attorney shall declare at what place in Ontario the chief agency of the corporation is, or is to be established, and shall expressly authorize such agent or agents to receive service of process in all actions and proceedings against the corporation in Ontario for any liability incurred by the corporation therein, and also to receive from the Registrar all notices which the law requires to be given, or which it is thought advisable to give, and shall declare that service of process for or in respect of such liability on either of such agents and receipt of such notices at such chief agency or personally by either of such agents shall be legal and binding on the corporation.

(5) The power of attorney with the affidavit shall be filed with the Registrar.

Filing of power of attorney.

(6) The power of attorney may confer upon the agent or agents any further or other powers which the corporation may deem advisable.

Authority conferred by power of attorney.

(7) The production of a copy of such power of attorney certified by the Registrar shall be sufficient evidence for all purposes of the power and authority of the person or persons therein named to act on behalf of the corporation in the manner and for the purposes set forth in such certified copy.

Effect of copy as evidence.

(8) Whenever the corporation changes its agent or chief agency in Ontario it shall file with the Registrar a power of attorney, as hereinbefore provided, stating the change or changes and containing a similar declaration as to service of process and notices as hereinbefore provided.

Changes in chief agent or agency.

(9) After the power of attorney is filed any process in any action or proceeding against the corporation for a liability incurred in Ontario may be validly served on the corporation at its chief agency; but nothing herein shall render invalid service in any other mode in which a corporation may be lawfully served.

Service of process thereafter.

(10) This section shall apply notwithstanding any special or other legislation of Ontario affecting any registered corporation. R.S.O. 1914, c. 184, s. 119.

Section to apply notwithstanding special Act.

127.—(1) The Registrar shall cause to be entered on the proper register the name of every corporation which from time to time he or, in case of appeal, the Lieutenant-Governor in Council finds to be entitled to registry, together with the date of the commencement of the registry and the term for which the registry is to endure.

Recording registry: entries on register.

(2) The term shall begin from the date of such commencement and shall end not later than the 30th day of June then next ensuing.

Term of registry.

(3) The Registrar shall also cause to be entered on the register the place where the head office and the chief agency, if any, are situate, and if there is a chief agency the name and address of the chief agent, and of the agent or agents appointed under the next preceding section.

Particulars to be entered.

(4) If the registry is suspended, revived, revoked, or cancelled, the date of and authority for such suspension, revivor, revocation or cancellation shall also be entered.

Entering suspension, etc., of registry.

(5) The Registrar shall issue under his hand and seal of office to every registered corporation a certificate of registry, setting forth that the corporation is entitled to registry as a

Issue of certificate of registry.

(*describing the corporation*) under this Act, and that the corporation is accordingly registered for the term stated in the certificate.

Commence-
ment and
end of term.

(6) Every certificate of registry shall specify the first day and the last day of the term for which the corporation is registered; and the corporation so registered shall be deemed to be registered from the commencement of the first day to the end of the last day so specified.

Duration of
registry.

(7) A certificate of registry which does not specify an earlier date of expiry shall, unless sooner suspended or cancelled, remain valid until the then next ensuing 30th day of June inclusive, when, if the corporation has complied with the law and continues solvent, it shall be entitled to a certificate of renewed registry, and so on every succeeding 30th day of June thereafter.

Interim
certificate.

(8) Notwithstanding failure to comply with the provisions of this Act within the prescribed time the Registrar may, upon payment of the prescribed fee, grant an interim certificate of registry or extend the currency of a subsisting certificate. R.S.O. 1914, c. 184, s. 120.

CORPORATE NAME: CHANGE OF NAME OR OF HEAD OFFICE.

Restrictions
upon use of
names.

128.—(1) No corporation shall be registered under a name identical with that under which any other existing corporation is registered, or under any other name likely, in the opinion of the Registrar, to deceive the public as to its identity.

New names.

(2) No registered corporation shall be registered under a new or different name except upon proof that such new or different name is authorized by law.

Change of
corporate
name.

(3) Where a provincial corporation is desirous of adopting a name different from that by which it was incorporated, or where, in the opinion of the Registrar, the name by which the corporation was incorporated may be easily confounded with that of another existing corporation, the Lieutenant-Governor in Council may change the name of the corporation to some other name to be stated in the Order in Council.

Not to affect
rights or
obligations.

(4) No such change of name shall affect the rights or obligations of the corporation.

Change of
head office.

(5) The location of the head office of a corporation may be changed in like manner.

Public notice.

(6) Such public notice shall be given of any change of name or head office, and of any application for such change, in the *Ontario Gazette* and otherwise as the Registrar may direct. R.S.O. 1914, c. 184, s. 121.

CORPORATIONS ADMISSIBLE TO REGISTRY: REFUSAL, SUSPENSION, REVIVOR, CANCELLATION OF REGISTRY: APPEAL.

129.—(1) Corporations mentioned in section 122, which are solvent and fall within one of the following classes, may, upon due application, be admissible to registry:

(a) Corporations duly constituted under the law of Ontario;

Corporations hereafter constituted.

(b) Corporations which being duly incorporated or constituted under the law of Ontario, or of any other Province of Canada, or of the Dominion of Canada, or of the United Kingdom, were in actual, active and *bona fide* operation in Ontario on the sixteenth day of April, 1912, but a corporation not being incorporated or constituted under the law of Ontario shall be admissible to registry only on due application and with the approval of the Minister and on such terms and conditions as he may prescribe;

Certain active corporations.

(c) Corporations duly constituted as joint stock corporations under the law of any other Province of Canada or of the Dominion of Canada, or of the United Kingdom, which issue only permanent shares and have a subscribed permanent stock of not less than \$500,000, whereof \$100,000 is paid in and unimpaired. R.S.O. 1914, c. 184, s. 122 (1); 1914, c. 2, Sched. (31); 1914, c. 21, s. 39 (1).

Other non-provincial or British corporations.

(2) Any registry purporting to have been made prior to 1st May, 1914, by any corporation mentioned in clause b of subsection 1 shall be deemed for all purposes to have been a registry under the said Act from the date of commencement of such purported registry. 1914, c. 21, s. 39 (2).

Registry validated.

(3) A corporation incorporated under the laws of any other country may, upon due application, with the approval of the Minister, be admitted to registry on such terms and conditions as he may deem expedient.

Corporations of other countries.

(4) Subject to section 153 no other corporation shall be registered. R.S.O. 1914, c. 184, s. 122 (2, 3).

No others.

130.—(1) Upon proof that registry or a certificate of registry has been obtained by fraud or mistake, or that a corporation exists for an illegal purpose, or is insolvent, or has failed to pay its obligations, or has wilfully, and after notice from the Registrar, contravened any of the provisions of this Act, or of the Act or instrument incorporating the company, or of any law in force in Ontario, or has ceased to exist, the registry of the corporation may be suspended or cancelled by the Registrar.

Suspension or cancellation of registry.

Notice to be given to the corporation.

(2) On the suspension or cancellation of the registry of any existing corporation the Registrar shall cause notice in writing thereof to be delivered to the corporation.

Publication in *Gazette*.

(3) Where the corporation has ceased to exist the notice shall be published in the *Ontario Gazette*.

Corporation to cease business except for winding up purposes.

(4) From and after such suspension or cancellation, or after termination of registry without renewal, the corporation shall, unless and until again registered, cease to transact or undertake business in Ontario, except so far as necessary for the winding up of its business; but any liability incurred by such corporation may be enforced against it as if such suspension, cancellation or termination had not taken place. R.S.O. 1914, c. 184, s. 123.

Decision of Registrar to be in writing and to be delivered to corporation.

131.—(1) Where in any disputed case the Registrar decides that a corporation is or is not legally entitled to registry, or to renewal of registry, or where he suspends, revives, or cancels the registry of a corporation, his decision, except as otherwise herein provided, shall be given in writing and he shall cause a copy thereof certified under his seal of office to be delivered to the corporation.

Certificate of decision or of registry.

(2) A certified copy of any such decision or of any certificate of registry may be had on application to the Registrar upon payment of the prescribed fee.

Filing affidavits and depositions.

(3) Affidavits and depositions received or taken by the Registrar shall be filed in his office. R.S.O. 1914, c. 184, s. 124.

Appeal to the Lieutenant-Governor in Council.

132.—(1) An appeal shall lie to the Lieutenant-Governor in Council from any decision of the Registrar affecting the right of any corporation to register, or affecting the revivor of registration, or suspending or cancelling the registration of any corporation, and from any decision of the Registrar under section 127 or section 128, and by leave of the Lieutenant-Governor in Council from his decision in any other case.

Notice of appeal and grounds.

(2) Unless otherwise ordered by the Lieutenant-Governor in Council no appeal shall be allowed unless within thirty days after the decision appealed against has been made notice of appeal and of the reasons therefor is delivered to the Registrar.

Decision.

(3) The decision of the Lieutenant-Governor in Council shall be final and conclusive. R.S.O. 1914, c. 184, s. 125.

Cancellation of registry by request of corporation.

133. The Registrar may at the request of the corporation, evidenced as he may direct, cancel its registry. R.S.O. 1914, c. 184, s. 126.

NOTICE TO CORPORATION FOR THE PURPOSES OF THE ACT.

134. Delivery of any written notice or document to a corporation for any purpose of this Act, where the mode is not otherwise expressly provided, may be by letter delivered at the head or chief office of the corporation in Ontario or its chief agency therein, or sent by registered post addressed to the corporation, its manager or agent at such head or chief office or agency, or by delivering it personally to an authorized agent of the corporation. R.S.O. 1914, c. 184, s. 127.

Service of notices.

UNREGISTERED CORPORATIONS AND ILLEGAL CONTRACTS.

135.—(1) No incorporated body or person acting in its behalf, other than a registered corporation, and a person duly authorized by it to act in its behalf shall undertake or transact the business of a loan corporation, or of a loaning land corporation, or of a trust company in Ontario.

No unregistered corporation to undertake business.

(2) Any setting up or exhibiting of a sign or inscription containing the name of the corporation, or any distribution or publication of any proposal, circular, card, advertisement, printed form or like document in the name of the corporation, or any written or oral solicitation on the corporation's behalf, or any collecting or taking of money on account of shares or of loans or advances shall, both as to the corporation and as to the person acting or purporting to act on its behalf, be deemed undertaking the business of the corporation within the meaning of this section.

Certain matters to be deemed undertaking business.

(3) Any promoter, organizer, manager, director, officer, collector, agent, employee, or person who undertakes or transacts any business of a corporation which is not registered under this Act shall be guilty of an offence. R.S.O. 1914, c. 184, s. 128.

No person to act as agent for unregistered corporation.

136. Any person, partnership, organization, society, association, company or corporation, not being a corporation registered under this Act or under *The Insurance Act*, assuming or using in Ontario a name which includes any of the words "Loan," "Mortgage," "Trust," "Trusts," "Investment," or "Guarantee," in combination or connection with any of the words "Corporation," "Company," "Association" or "Society," or in combination or connection with any similar collective term, or assuming or using in Ontario any similar name, or any name or combination of names which is likely to deceive or mislead the public shall be guilty of an offence; and any person acting on behalf of such person, partnership, organization, society, association, company or corporation shall also be guilty of an offence; but where any of such combinations of words formed part of the corporate name of any combination theretofore duly incor-

Penalty for using certain words in name of company while unregistered.

Rev. Stat. c. 222.

porated by or under the authority of an Act of Ontario or of the Parliament of Canada the combination may continue to be used in Ontario as part of the corporate name. R.S.O. 1914, c. 184, s. 129.

Interpreta-
tion.

"Contract."

137.—(1) In this section :

"Contract" shall mean and include any contract, agreement, undertaking or promise

(a) to pay to or for the contract-holder any money or money's worth;

(b) to sell, supply, or procure any building or site or land or to bring about the purchase and sale or supply thereof; or

(c) to construct or procure the construction of any house or building

made upon any consideration which includes an entrance or membership fee, or expense contribution, initial, renewal, periodical or recurrent, or which includes any periodical or recurrent contribution to a fund, or account, or source for, or intended or alleged to be for, the carrying out of such contract;

Interpreta-
tion
extended.

And "contract" shall further include any contract, agreement, undertaking, or promise, the benefit of which to the contract-holder paying any such consideration is to be wholly or partly postponed or deferred until other contract-holders have been provided for, or is to depend upon the number or the persistence of the other contract-holders, or upon the accession of new contract-holders, or upon the order or sequence of the contract.

Prohibition
of certain
contracts.

Rev. Stat.
c. 222.

Order for
restitution.

Penalty for
non-com-
pliance.

(2) Any person, partnership, organization, society, association, company or corporation, not being a corporation registered under this Act or under *The Insurance Act*, undertaking or effecting, or offering to undertake or effect, any such contract shall be guilty of an offence; and any person acting on behalf of such person, partnership, organization, society, association, company or corporation, shall also be guilty of an offence, and the convicting magistrate or justices, in addition to imposing the prescribed penalty, may at the time of conviction or thereafter make such order for the restitution of the money which was unlawfully taken as to him or them shall seem just; and in default of compliance with such order the offender shall be liable to imprisonment for a term not exceeding twelve months. R.S.O. 1914, c. 184, s. 130.

Use of sign,
name or
document
inducing
illegal
contract.

138. Where in any case arising under any of the next preceding three sections it is found by the magistrate or justices that the person, partnership, organization, society, com-

pany or corporation charged or his or its agent is exhibiting or using any sign, inscription or name, or distributing, using or publishing any document, including any proposal, circular, card, advertisement, notice, application, contract or printed form which, in the opinion of the magistrate or justices, induces, or tends to induce, a violation of any such sections, or is likely to deceive or mislead the public either as to the party or the status of the party undertaking the contract, or as to the nature, terms or effect of the contract, the magistrate or justices may summarily order the discontinuance of such sign, inscription, name or document; and non-compliance with such order shall be an offence. R.S.O. 1914, c. 184, s. 131.

Order for discontinuance.

OFFENCES AND PROSECUTIONS.

139.—(1) For every contravention of this Act, which is declared to be an offence and for which no other penalty is provided, the offender shall, for the first offence, incur a penalty of not less than \$20 and not more than \$200, and for any subsequent offence of the same kind shall be liable to imprisonment for any term not less than three months and not more than twelve months, or in the case of an organization, society, association, company or corporation to a penalty not exceeding \$1,000.

Offences for which no special penalty provided.

(2) The prosecution shall be before a police magistrate or two justices of the peace, and, except as herein otherwise provided, the provisions of *The Summary Convictions Act* shall apply.

Prosecutions. Rev. Stat. c. 121.

(3) The information or complaint shall be laid or made in writing within one year after the commission of the offence.

Limitations of prosecutions.

140.—(1) Every person who makes any wilfully false or deceptive statement in any account, statement, return, report or other document respecting the affairs of a corporation shall be guilty of an offence and shall be liable, on conviction thereof, to imprisonment for a term not exceeding five years.

False statements or returns.

Penalty.

(2) Every president, vice-president, director, auditor, manager or other officer of a corporation, who,

Officers' liability.

(a) prepares, signs, approves, or concurs in any such such account, statement, return, report or document containing such false or deceptive statement; or,

(b) uses the same with intent to deceive or mislead any person;

shall be held to have wilfully made such false or deceptive statement, and shall further be responsible for all damages sustained by any person in consequence thereof.

Trial under
Rev. Stat.
c. 121,
before a police
magistrate
or two justices

(3) Offences under this section shall be prosecuted under *The Summary Convictions Act* before a police magistrate or two justices of the peace. 1919, c. 42, s. 18.

Security
upon ap-
peal from
conviction.

141. Every person convicted under this Act who gives notice of appeal against the conviction shall before proceeding with the appeal give security to the satisfaction of the magistrate or justices to appear personally at the court and to prosecute such appeal, and to abide by the judgment of the court thereupon, and to pay such costs as may be awarded, and if a pecuniary penalty is imposed to pay the same if the conviction is affirmed. R.S.O. 1914, c. 184, s. 133.

Informant:
application
of fine.

142.—(1) One-half of any penalty imposed under the authority of this Act shall belong to His Majesty, for the use of Ontario, and the other half shall belong to the prosecutor.

Burden of
proof of
registry.

(2) In every action for a penalty or prosecution for an offence against this Act, the burden of proving registry shall be upon the person, partnership, organization, society, association, company or corporation charged. R.S.O. 1914, c. 184, s. 134.

VERIFICATION OF ANNUAL STATEMENTS MADE TO REGISTRAR; SPECIAL AUDIT.

Registrar to
have access
to corpora-
tion books, etc.

143.—(1) The Registrar or any person authorized under his hand and seal shall, with the approval of the Minister, have at any time within reasonable business hours of every day except holidays access to the books, vouchers, securities and documents of a corporation, and any officer or person in charge, possession, custody or control of such books, vouchers, securities or documents refusing or neglecting to afford such access shall be guilty of an offence, and the corporation, if registered, shall be liable to have its registry suspended.

Cancellation
of registry
for refusing
access.

(2) The corporation, on continued refusal or neglect to afford such access, shall be liable to have its registry cancelled or not renewed after termination of the current certificate.

Special audit
in case of
fraud, illegal
acts or de-
fault of audit
or financial
statement.

(3) Where a corporation is three months in default in the delivery of the financial statement required by section 117 or upon proof that its accounts have been materially and wilfully falsified, or that for eighteen consecutive months there has been no *bona fide* audit of the books and accounts; or where there is filed with the Registrar a requisition for audit bearing the signatures, addresses and occupations of at least twenty-five shareholders of the corporation, holding shares upon which not less than \$10,000 has been paid in, and alleging to the satisfaction of the Registrar specific

fraudulent or illegal acts, or repudiation of contracts, or insolvency, and accompanied by a deposit of \$300 or such less sum as the Registrar may fix as security to cover the costs of the audit, the Registrar may nominate a competent accountant who shall under his direction make a special audit of the corporation's books, accounts and securities, and make to him a written report thereupon verified upon oath.

(4) A special auditor so appointed shall be sufficiently accredited if he delivers to the secretary or to any managing officer of the corporation a written statement under the hand and seal of the Registrar to the effect that the Registrar has nominated him to audit the books, accounts and securities of the corporation.

(5) The expense of such special audit shall be borne by the corporation, and the auditor's account therefor when approved in writing by the Registrar shall be conclusive and shall be payable forthwith.

(6) Where the facts alleged in the requisition appear to the Registrar to have been partly or wholly disproved by the audit, and he deems it just, he may pay the costs of the audit partly or wholly out of the deposit.

(7) The deposit or the balance, if any, remaining after payment of such costs shall be returned to the requisitioning shareholders upon the order of the Registrar.

(8) Where a corporation, by its officer, employee, servant or agent having in his custody, possession or power the funds, books, vouchers, securities, or documents of the corporation, refuses to have the same duly audited, as provided by section 109, or by this section or by section 144, or obstructs an auditor or examiner in the performance of his duties, the Registrar, upon proof of the fact, may suspend or cancel the registry of the corporation, or may terminate the registry after the expiry of the current certificate of registry.

(9) If the report of the special auditor appears to the Registrar to disclose fraudulent or illegal acts on the part of the corporation, or a repudiation of its contracts, or its insolvency, he shall notify the corporation accordingly and furnish it with a copy of the report, allowing two weeks for a statement in reply to be filed with him.

(10) Upon consideration of the report and of the corporation's statement in reply, and of such further evidence, documentary or oral, as he may require, the Registrar shall render his decision in writing, and may thereby continue or terminate, or suspend or cancel the registry of the corporation. R.S.O. 1914, c. 184, s. 135.

Appointment
of examiner
by Attorney-
General.

144.—(1) The Attorney-General, of his own motion or upon an application being made to him in writing, may appoint some competent person to make a special examination and audit of the corporation's books, accounts and securities, and to enquire into the conduct of the business of the corporation generally.

Evidence
upon which
inquiry to
be ordered.

(2) The application shall be supported by such evidence as the Attorney-General may require for the purpose of showing that there is good reason for requiring such investigation to be made, and that it is not prompted by malicious motives.

Security
for costs.

(3) The Attorney-General may require security for the payment of the costs of the enquiry to be given before appointing the examiner.

Powers of
examiner as
to summon-
ing wit-
nesses, etc.

Rev. Stat.
c. 20.

(4) The examiner may summon witnesses and take evidence under oath, and generally, for the purposes of such examination, audit and enquiry, shall have the like powers as may be conferred on a commissioner appointed under *The Public Inquiries Act*.

Report to
Attorney-
General.

(5) Upon the conclusion of such examination, audit and enquiry the examiner shall make his report in writing to the Attorney-General. R.S.O. 1914, c. 184, s. 136.

Requiring
additional
information
or returns
from loan
and trust
corporations.

(6) The Registrar may, by notice in writing, whenever he sees fit, require a corporation to make in addition to its annual or other returns required by this Act, a return verified by affidavit of one of its officers, or to furnish information verified in the same manner upon any subject connected with its affairs, and the corporation shall make the return within the time mentioned in the notice requiring the same.

Notice
requiring
return or
information.

(7) The notice in subsection 6 referred to may be made to the president, secretary, managing director or other officer or officers having apparent control of the books of the corporation, or any of them in the Province of Ontario, and non-compliance with such notice shall be an offence. 1918, c. 20, s. 36.

Appointment
of examiner
at request of
Dominion
Mortgage
& Companies
Association.

(8) Upon the request of the Dominion Mortgage and Investments Association or the Land Mortgage Companies Association of the Province of Ontario, the Attorney-General shall appoint an examiner as provided under subsection 1 of this section. 1919, c. 42, s. 19.

Refusal to
make entries
or exhibit
same, etc.

145. Every director, manager, auditor, officer, agent, collector, servant, or employee of the corporation who refuses or neglects to make any proper entry in any book of record, entry or account of the corporation, or to exhibit the same, or to allow the same to be inspected or audited, either for the general purposes of the corporation or for the purposes of this Act, and extracts to be taken therefrom shall be guilty of an offence. R.S.O. 1914, c. 184, s. 137.

146.—(1) A notice published in the *Ontario Gazette* over the name of the Registrar or Assistant Registrar shall, without further proof, be *prima facie* evidence of the facts set forth in such published notice. Evidence: notice in Gazette.

(2) All copies of returns, reports or other official publications of the Registrar purporting to be printed by the King's Printer, or to be printed by order of the Assembly, shall, without further proof, be admitted as evidence of such publication and printing and as true copies of the originals. Official publications.

(3) A certificate under the hand of the Registrar or Assistant Registrar and the Registrar's seal of office, that on a stated day the corporation mentioned therein was or was not registered, or that the registry of any corporation was originally granted, or was renewed, suspended, revived or cancelled, on a stated day, shall be *prima facie* evidence of the facts stated in the certificate. Certificate as to registry.

(4) Copies of, or extracts from, any book, record, instrument or document in the office of the Registrar or of or from any official instrument or document issued under this Act shall, if certified by him or by the Assistant Registrar to be true copies or extracts and sealed with the Registrar's seal of office, be held as authentic and shall be *prima facie* evidence of the same legal effect as the original. R.S.O. 1914, c. 184, s. 138. Copies of or extracts from official documents.

147.—(1) In any action or proceeding against a corporation the books mentioned in section 107 shall be *prima facie* evidence of the facts purported to be thereby stated. Books as evidence.

(2) The books of a corporation shall be *prima facie* evidence of the truth of all matters purporting to be therein recorded as between the corporation and its shareholders, and as between its shareholders. R.S.O. 1914, c. 184, s. 139. Idem.

148.—(1) The Registrar shall visit personally, or cause a duly qualified member of his staff to visit, at least once in each year the head office of each corporation registered under this Act, and examine carefully the statements of the condition and affairs of each such corporation and report thereon to the Minister as to all matters requiring his attention and decision. Inspection of registered corporations.

(2) For the purpose of such examination, the corporation shall prepare and submit to the Registrar such statement or statements with respect to its business, finances or other affairs of the corporation, in addition to the statement mentioned in any of the sections or subsections of this Act, as the Registrar may require, and the officers, agents and servants of the corporation shall cause their books to be open for inspection and shall otherwise facilitate such examination so far as it is in their power. Material to be furnished on inspection.

Examination
under oath.

(3) The Registrar may examine under oath the officers, agents or servants of the corporation for the purpose of obtaining any information which he deems necessary for the purpose of such examination. 1921, c. 61, s. 11, *part*.

Special re-
port where
condition
unsound.

149. If as the result of the examination as aforesaid of any corporation registered under this Act the Registrar believes that the assets of the corporation are insufficient to justify its continuance in business, he shall make a special report to the Minister on the condition of such corporation. 1921, c. 61, s. 11, *part*.

FEES.

Fees for
incorpora-
tion.

150.—(1) Until otherwise prescribed by the Lieutenant-Governor in Council the fees for letters patent of incorporation under this Act shall be as mentioned in Schedule A.

Other
fees.

(2) Until otherwise prescribed by the Lieutenant-Governor in Council the fees set out in Schedule B shall be payable in respect of the matters therein mentioned.

Payment to
Registrar.

(3) The fees shall be payable to the Registrar.

Commuta-
tion on pro-
posed dis-
continuance
of business.

(4) Where a corporation proves to the satisfaction of the Registrar that it is discontinuing business in Ontario, and has given such public notice of intended discontinuance as shall be required, the fee for registry or renewal of registry, as the case may be, may, on the certificate of the Registrar, be commuted to one-fourth of the prescribed fee; but registry at such commuted fee shall not be granted for more than four years in all, unless for cause shown to the satisfaction of the Registrar, in which case registry may be granted year by year for an additional number of years. R.S.O. 1914, c. 184, s. 140.

Time of
payment.

151. In the case of an application or other document or instrument to be filed, examined or deposited, the fee shall be paid before the application or other document or instrument is dealt with; in the case of registry or certificates of registry the fee shall be paid before the corporation is registered. R.S.O. 1914, c. 184, s. 141.

Application
of certain
sections of

152. Except where the provisions of this Act are inconsistent with them, sections 27, 51, 53, 56, 57, 58, 61, 62, 63, 75, 77, subsection 1 of section 97, section 100 and Part XIV. of *The Companies Act* shall apply, substituting for the words "Provincial Secretary," in subsection 1 of section 97 and Part XIV., the word "Registrar." R.S.O. 1914, c. 184, s. 142.

Rev. Stat.
c. 218.

SAVING AS TO TERMINATING SHARES ISSUED BEFORE 16TH APRIL, 1912.

Saving as
to law
applicable
to terminat-
ing shares.

153. Notwithstanding the repeal of certain Acts and parts of Acts by section 143 of *The Loan and Trust Corporations' Act*, passed in the 2nd year of His Majesty's reign chaptered 34, the law of Ontario which, on the 16th day of April, 1912, was in force and applied to corporations having termin-

ating or withdrawable stock or shares, shall continue in force and shall apply to such corporations so long as such stock or shares subsist. R.S.O. 1914, c. 184, s. 143.

SCHEDULE OF FEES.

SCHEDULE "A."

Fee for Letters Patent of Incorporation:

(a) \$300,000 but less than \$500,000	\$200 00
(b) \$500,000 but less than \$1,000,000	250 00
(c) \$1,000,000 and \$25 for each additional \$100,000.....	350 00
(d) Supplementary Letters Patent	50 00

R.S.O. 1914, c. 184, Sched. "A."

SCHEDULE "B."

1. Application for initial registry (s. 125).....	\$ 5 00
2. Extension of time not exceeding seven days, or any renewal thereof not exceeding seven days, for filing annual statement, application for renewal of registry, or any other documents or information required under the authority of this Act, provided that the Registrar may grant relief from the payment of this fee in any case in which he thinks for reasons appearing to him to be sufficient, that it should not be imposed	10 00
3. Filing power of Attorney in case of corporations mentioned in section 126	5 00
4. Filing new power or change of attorney (s. 126)	5 00
5. Initial registry Loan or Loaning Land Corporations	100 00
6. Initial Registry Trust Companies	150 00
7. Certificate of renewed registry (s. 127):	
(a) Where the assets of the Corporation amount to not more than \$250,000	35 00
(b) Where the assets of the corporation exceed \$250,000 but do not exceed \$500,000	50 00
(c) Where the assets of the Corporation exceed \$500,000 but do not exceed \$1,000,000	75 00
(d) Where the assets of the corporation exceed \$1,000,000 but do not exceed \$1,500,000	100 00
(e) Where the assets of the corporation exceed \$1,500,000 but do not exceed \$2,000,000	125 00
(f) Where the assets of the corporation exceed \$2,000,000 but do not exceed \$2,500,000	150 00
(g) Where the assets of the corporation exceed \$2,500,000 but do not exceed \$3,000,000	175 00
(h) Where the assets of the corporation exceed \$3,000,000 but do not exceed \$5,000,000	200 00
(i) Where the assets of the corporation exceed \$5,000,000 but do not exceed \$10,000,000	250 00
(j) Where the assets of the corporation exceed \$10,000,000	300 00
(k) Minimum under section 150 (4)	35 00

For purposes of this article, capital stock uncalled shall not be deemed an asset.

8. Interim certificate of registry or extension of certificate (s. 127)	\$ 5 00
9. Revivor of registry after suspension (s. 127):	
For a corporation within article 7 (a)	10 00
For a corporation within article 7 (b)	15 00
For a corporation within article 7 (c)	20 00
For a corporation within article 7 (d)	25 00
For a corporation within article 7 (e)	30 00
10. Change of corporate name (s. 128)	25 00
11. Change of head office (s. 128)	25 00
12. Filing annual statement (s. 117)	5 00
13. Filing new by-laws or amendments thereto after initial registry (s. 86)	2 00
14. Application for increase, decrease, conversion or alteration of capital stock or shares or declaration or alteration of powers	10 00
(a) Certificate of decrease, conversion or alteration of capital stock or shares or declaration or alteration of powers	150 00
(b) Order in Council increasing capital stock:	
i. \$300,000 but less than \$500,000	200 00
ii. \$500,000 but less than \$1,000,000	250 00
iii. \$1,000,000 and \$25 for each additional \$100,000	350 00
iv. Supplementary Letters Patent	50 00
15. Application for increase in borrowing powers under section 46 (2)	25 00
(a) Order in Council	200 00
16. Copy of decision of registrar, per folio of 100 words	10
Also for certificate of Registrar	1 00
17. Certified copy of entry on Register or of certificate	1 00
18. Copies of or extracts from documents filed with Registrar per folio of 100 words	10
Also for certificate of Registrar	1 00
19. Examining and passing upon applications or documents under sections 55 to 64	25 00
Order in Council and certificate	200 00
20. Examining and passing upon applications or documents under sections 26 and 27 of <i>The Trustee Act</i> (Rev. Stat. c. 150)	25 00
Order in Council	100 00
21. Examining and passing upon applications or documents under s. 20.	25 00
Order in Council	100 00

O-in-C approved 25th Oct., 1927.

CHAPTER 224.

The Railway Act.

INTERPRETATION.

1. In this Act, and in any special Act, in so far as this Act applies thereto,— Interpretation.

- (a) “Board” shall mean The Ontario Railway and Municipal Board; “Board.”
- (b) “By-law,” when referring to an act of the company, shall include a resolution; “By-law.”
- (c) “Company” shall mean a railway, street railway or incline railway company, and shall include every such company and any person or municipal corporation having authority to construct or operate a railway or street railway or incline railway; “Company.”
- (d) “Costs” shall include fees, counsel fees, and expenses; “Costs.”
- (e) “County” shall include district; “County.”
- (f) “Express toll” shall mean any toll, rate or charge to be charged by the company, or any person or corporation other than the company, to any persons, for hire or otherwise, for or in connection with the collecting, receiving, caring for or handling of any goods for the purpose of sending, carrying or transporting them by express, or for or in connection with the sending, carrying, transporting or delivery by express of any goods, or for any service incidental thereto, or for or in connection with any or either of these objects where the whole or any portion of the carriage or transportation of such goods is by rail upon the railway of the company; “Express toll.”
- (g) “Goods” shall include personal property of every description that may be conveyed upon the railway, or upon steam or other vessels connected with the railway; “Goods.”
- (h) “Highway” shall include a public road, street, lane, or other public way or communication; “Highway.”

- "Inspecting engineer." (i) "Inspecting engineer" shall mean an engineer who is directed by the Board to examine a railway or works, and shall include two or more engineers when two or more are so directed;
- "Judge." (j) "Judge" shall mean a Judge of the Supreme Court or of a county or district court, as the case may be;
- "Land." (k) "Land" shall mean the land, the acquiring, taking, or using of which is authorized by this or by the special Act, and shall include real estate and an easement over or privilege in respect of, and any interest in land;
- "Lease." (l) "Lease" shall include an agreement for a lease;
- "Owner." (m) "Owner," where, under this Act or the special Act, any notice is required to be given to the owner of land, or where any act is authorized or required to be done with the consent of the owner, shall mean the person who, under this Act or the special Act, or any Act incorporated therewith, is enabled to sell and convey the land to the company, and shall include a mortgagee of the land;
- "Plan." (n) "Plan" shall mean a ground plan of the land and property taken or intended to be taken;
- "Railway." (o) "Railway" shall mean any railway which the company has authority to construct or operate, and shall include all branches, sidings, stations, depots, wharfs, rolling stock, equipment, stores, property, real or personal, and works connected therewith, and also any railway bridge, tunnel, or other structure which the company is authorized to construct;
- "Registrar." (p) "Registrar of deeds" or "Registrar" shall include the master of titles, or local master of titles, or other officer with whom the title to the land is registered;
- "Registry Office." (q) "Registry office" or other words descriptive of the office of the registrar of deeds, shall include the land titles office or other office in which the title to the land is registered;
- "Rolling stock." (r) "Rolling stock" shall mean and include any locomotive, engine, motor car, tender, snow plough, flanger, and every description of car or of railway equipment designed for movement on its wheels over or upon the rails or tracks of the company;
- "Secretary." (s) "Secretary" shall mean the secretary of the Board;
- "Special Act." (t) "Special Act" shall mean any Act authorizing the construction of or otherwise specially relating to

a railway or street railway, whether operated by steam, electricity or other motive power, and with which this Act is incorporated;

- (u) "Street railway" shall mean a railway constructed or operated along and upon a highway under an agreement with or by-law of a city or town, although it may at some point or points deviate from the highway to a right of way owned by the company, under the powers conferred by section 243, and shall include all portions of the railway within the city or town and for a distance of not more than one and one-half miles beyond the limits thereof, although such one and one-half miles may be constructed under a by-law of or agreement with a municipal corporation other than that of such city or town, and shall also include any part of an electric railway which lies within the limits of a city or town and is constructed or operated along and upon a highway;

- (v) "Toll" or "Rate" shall mean and include any toll, rate, charge or allowance charged or made either by the company, or upon or in respect of a railway owned or operated by the company, or by any person on behalf or under authority or consent of the company, in connection with the carriage and transportation of passengers, or the carriage, shipment, transportation, care, handling or delivery of goods, or for any service incidental to the business of a carrier; and shall include also any toll, rate, charge or allowance so charged or made in connection with rolling stock, or the use thereof, or any instrumentality or facility of carriage, shipment or transportation, irrespective of ownership or of any contract, express or implied, with respect to the use thereof; and shall include also any toll, rate, charge or allowance so charged or made for furnishing passengers with beds or berths upon sleeping-cars, or for the collection, receipt, loading, unloading, stopping over, elevation, ventilation, refrigeration, icing, heating, switching, ferriage, cartage, storage, care, handling or delivery of or in respect of goods transported, or in transit, or to be transported; and shall include also any toll, rate, charge or allowance so charged or made for the warehousing of goods, wharfage or demurrage or the like, or so charged or made in connection with any one or more of the above-mentioned objects separately or conjointly;

- (w) "Traffic" shall mean the traffic of passengers, goods and rolling stock;

- "Train." (x) "Train" shall include any engine, motor car or other rolling stock;
- "Under-taking." (y) "Undertaking" shall mean the railway and works of every description which the company has authority to construct or operate; R.S.O. 1914, c. 185, s. 2, (a-y).
- "Working expenditure." (z) "Working expenditure" shall mean and include
- (i) all expenses of maintenance of the railway;
 - (ii) all such tolls, rents or annual sums as are paid in respect of the hire of rolling stock, let to the company, or in respect of property leased to or held by the company, apart from the rent of any leased line;
 - (iii) all rent charges or interest on the purchase money of land belonging to the company purchased but not paid for or not fully paid for;
 - (iv) all expenses of or incidental to working the railway, and the traffic thereon, including all necessary repairs and supplies to rolling stock while on the lines of another company;
 - (v) all rates, taxes and insurance and compensation for accidents or losses;
 - (vi) all sums payable, under any Act of this Legislature, to workmen or their dependents as compensation for injuries sustained or industrial diseases contracted in the course of their employment;
 - (vii) all salaries and wages of persons employed in and about the working of the railway and traffic;
 - (viii) all office and management expenses, including directors' fees, and agency, legal, and other like expenses;
 - (ix) all costs and expenses of and incidental to the compliance by the company with any order of the Board; and
 - (x) generally, all such charges, if any, not hereinbefore otherwise specified, as in all cases of English railway companies are usually carried to the debit of revenue as distinguished from capital account. R.S.O. 1914, c. 185, s. 2 (z); 1916, c. 31, s. 10.

APPLICATION OF ACT.

2. This Act shall, unless otherwise expressed, apply to all railways, other than Government railways, and when so expressed, and not otherwise, to street railways and incline railways howsoever incorporated, and whether operated by steam, electricity or other motive power, and whether constructed on highways or on lands owned by the company or partly on highways and partly on such lands, and shall be deemed to be incorporated and shall be construed, as one Act, with the special Act, subject as herein provided. R.S.O. 1914, c. 185, s. 3.

3.—(1) The provisions of this Act in respect of tolls, tariffs and joint tariffs shall, so far as they are applicable, extend to the traffic carried by any company by water, between any ports or places in Ontario, if the company owns, charters, uses, maintains or works, or is a party to any arrangement for using, maintaining or working vessels for carrying traffic by water between any such ports or places.

(2) The provisions of this Act in respect of tolls shall, in so far as they are applicable, extend and apply to

(a) any company which has power under any special Act to construct, maintain and operate any bridge or tunnel for railway purposes, or for railway and traffic purposes, and to charge tolls for traffic carried over, upon or through such structure by any railway; and

(b) the traffic so carried over, upon or through such structure. R.S.O. 1914, c. 185, s. 4.

4. Any section of this Act may, by the special Act, be excepted from incorporation therewith, or may thereby be extended, limited or qualified, and it shall be sufficient, for the purposes of this section, to refer to any section of this Act by its number merely. R.S.O. 1914, c. 185, s. 5.

5. If in any special Act heretofore passed it is enacted that any provision of *The Railway Act of Ontario*, *The Electric Railway Act*, *The Street Railway Act* or *The Ontario Railway Act, 1906*, in force at the time of the passing of such special Act, is excepted from incorporation therewith, or if the application of any such provision is, by such special Act, extended, limited or qualified, the corresponding provision of this Act shall be taken to be excepted, extended, limited or qualified in like manner; and, unless otherwise expressly provided in this Act or the special Act, this Act shall apply to every railway company incorporated under a special Act or any general Act, and the sections expressly made applicable shall apply to every street railway company so incorporated,

Conflict between this Act and special Act.

but where the provisions of the special Act and the provisions of this Act are inconsistent the special Act shall be taken to over-ride the provisions of this Act so far as is necessary to give effect to such special Act. R.S.O. 1914, c. 185, s. 6.

What sections to apply to street railway companies,

6.—(1) Sections 7 to 51, 53 to 58, 65 to 67, 97, 103, 105, 110, 111, 116, 117, 129, 143, 147, 148, 154, 156, 162, 163, to 172, 175, 176, 210, 226, 227, 266 to 268, 274 to 282, 286 to 301, 303 and 304, shall apply to street railway companies. R.S.O. 1914, c. 185, s. 7 (1).

or to incline railways.

(2) Sections 7 to 51, 53 to 58, 97, 103, 110, 111, 120, 129, 143, 147, 162, 177, 219, 236 to 238, 240, 258, 266 to 268, 274 to 282, 286 to 301 and 304, shall apply to incline railways. R.S.O. 1914, c. 185, s. 7 (2); 1924, c. 51, s. 2.

ORGANIZATION OF THE COMPANY.

Offices.

Head office.

7. The head office of the company shall be at the place designated in the special Act, but the company may, by by-law, from time to time, change the location of its head office to any place in Ontario, notice whereof shall be given to the secretary of the Board who shall keep a register for the purpose of recording all changes so notified. R.S.O. 1914, c. 185, s. 8.

Change of location.

Provisional Directors.

Provisional directors.

Quorum.

Powers.

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Deposit of money.

Changes in board of provisional directors.

8.—(1) The persons mentioned by name as such in the special Act shall be the provisional directors of the company, and a majority of them shall be a quorum, and they shall hold office as such until the first election of directors, and may forthwith open stock books and procure subscriptions for shares, and receive payments on account thereof, and make calls upon subscribers in respect of their shares, and sue for and recover the same, and receive for the company any grant, loan, bonus or gift made to it or in aid of the undertaking, and enter into any agreement authorized by this Act or by the special Act, with the person or corporation making such grant, loan, bonus or gift respecting the condition or disposition thereof, and cause plans and surveys to be made, and shall deposit in a chartered bank of Canada, having an office in Ontario, all money received by them, which shall not be withdrawn, except for the purposes of the undertaking, or upon the dissolution of the company.

(2) The provisional directors may add to their number, or substitute for any member, whether named in the special Act, or by the said provisional directors, who may desire to resign or withdraw, any other person as a provisional director.

(3) If more than the whole stock has been subscribed the provisional directors shall allocate and apportion the authorized stock among the subscribers as they deem most advantageous and conducive to the furtherance of the undertaking; and in such allocation and apportionment they may exclude any one or more of the subscribers, if, in their judgment, such exclusion will best secure the building of the railway.

Allotment
of stock.

Power of
exclusion.

(4) All meetings of the provisional directors shall be held at the head office of the company or at such other place in Ontario as may, in their opinion, best suit the interests of the company.

Meetings.

(5) No subscription for shares shall be binding on the company unless approved by resolution of the provisional directors or of the directors, nor unless ten per centum of the amount subscribed has been actually paid within one month after subscription. R.S.O. 1914, c. 185, s. 9.

When sub-
scription for
stock to be
binding.

Capital.

9.—(1) The capital stock of the company, the amount of which shall be stated in the special Act, shall be divided into shares of \$100 each; and the money so raised shall be applied, in the first place, to the payment of all fees, expenses and disbursements for procuring the passing of the special Act, and for making the surveys, plans and estimates of the works authorized by the special Act; and the remainder of such money shall be applied to the making, equipping, completing and maintaining of the railway and other purposes of the undertaking.

Capital stock
and shares.

Application
of proceeds.

(2) So soon as twenty-five per centum of the capital stock is subscribed and ten per centum paid thereon into a chartered bank of Canada, having an office in Ontario, to the credit of the company, the provisional directors, or a majority of them, shall call a general meeting of the shareholders for the purpose of electing directors of the company, giving at least four weeks' notice by advertisement in the *Ontario Gazette*, and in at least one newspaper published in the place where the head office is situate, of the time, place and purpose of the meeting.

Calling first
meeting for
election of
directors.

Notice.

(3) If the provisional directors neglect to call such meeting, for three months after twenty-five per centum of the capital stock shall have been subscribed and ten per centum thereof paid up, the same may be called by any five of the subscribers who have so paid up ten per centum and who collectively have subscribed for not less than twenty-five shares of the capital stock and who have paid up all calls thereon.

When sub-
scribers may
call first
general
meeting.

(4) At such general meeting the shareholders present, either in person or by proxy, who shall at the opening of such meeting have paid up ten per centum on the shares subscribed

First elec-
tion of
directors.

by them, shall elect directors, in manner and qualified as hereinafter mentioned, who shall constitute the board of directors and shall hold office until the next general annual meeting. R.S.O. 1914, c. 185, s. 10.

Increase of capital stock.

10.—(1) The capital stock of the company may, with the approval of the Board, be increased, from time to time, to any amount, if

Approval by shareholders.

(a) such increase is sanctioned by a vote, in person or by proxy, of the shareholders who hold at least two-thirds in amount of the subscribed stock of the company, at a meeting expressly called by the directors for that purpose; and

Entry of proceedings in minutes.

(b) the proceedings of such meeting have been entered in the minutes of the proceedings of the company.

Notice of meeting and object.

(2) Notice in writing, stating the time, place and object of such meeting, and the amount of the proposed increase, shall be given to each shareholder, at least twenty days previously to such meeting, by delivering the notice to the shareholder personally, or depositing the same in the post office, post paid and properly directed to the shareholder.

Fees on such applications.

(3) Such fees as may be prescribed in the case of other companies shall be payable in respect of applications to the Board for its approval of the increase of the capital stock of the company. R.S.O. 1914, c. 185, s. 11.

General Meetings.

Annual meetings.

11.—(1) A general meeting of the shareholders for the election of directors and for the transaction of other business connected with or incident to the undertaking, to be called "the annual meeting," shall be held annually on the day mentioned in the special Act, or on such day as may be fixed for that purpose by the by-laws of the company; and other general meetings, to be called "special meetings," may be called at any time by the directors, or by shareholders representing at least one-fourth in value of the subscribed stock, if the directors, having been requested by such shareholders to convene such special meeting, for twenty-one days thereafter fail to call such meeting.

Place of annual meetings.

(2) The annual meetings shall be held at the head office of the company.

Place of special general meetings.

(3) Special general meetings may be held at such places in Ontario and at such times and in such manner and for such purposes as may be provided by the by-laws of the company. R.S.O. 1914, c. 185, s. 12.

Notice of meetings.

12.—(1) Two weeks' notice of any meeting of the shareholders shall be given by advertisement once in each week for two successive weeks in at least one newspaper published in the place where the head office is situate.

(2) The notice shall specify the place and the day and the hour of the meeting; and a copy of the newspaper containing the notice shall be evidence of the publication. R.S.O. 1914, c. 185, s. 13. Contents.
Evidence.

13.—(1) Any business connected with or incident to the undertaking may be transacted at an annual meeting, excepting such business as by this Act is required to be transacted at a special meeting; but no special meeting shall enter upon any business not set forth in the notice by which it is convened. What business may be transacted.
Exception.

(2) At any meeting of the shareholders every shareholder shall be entitled to as many votes as he holds shares in the company upon which all calls due have been paid. Votes according to shares.

(3) Every shareholder may vote by proxy if such proxy produces from his constituent an appointment in writing in the words or to the effect following,— Privilege to vote by proxy.

I, _____, of _____, one of the shareholders of the _____, do hereby appoint _____ of _____, to be my proxy, and in my absence to vote for me or give my assent to any business, matter or thing relating to the undertaking of the _____ that is mentioned or proposed at any meeting of the shareholders of the company, in such manner as he thinks proper. Form of proxy.

In witness whereof, I have hereunto set my hand and seal, the day of _____, 19____.

(4) A vote by proxy shall be as valid as if the constituent had voted in person, but no person shall be qualified to be appointed a proxy who is not himself a shareholder; and every matter or thing proposed or considered at any meeting of the shareholders shall be determined by the majority of votes; and all decisions and acts of any such majority shall bind the company and be deemed the decisions and acts of the company. R.S.O. 1914, c. 185, s. 14. Qualification of proxy.
Majority to govern.

14. A copy of the minutes of proceedings and resolutions of the shareholders of the company at any annual or special meeting, or of the minutes of proceedings and resolutions of the directors at their meetings, extracted from the minute book, kept by the secretary of the company, and by him certified to be a true copy extracted from such minute book and purporting to be sealed with the company's seal shall, without proof of the signature of such secretary, be evidence of such proceedings and resolutions. R.S.O. 1914, c. 185, s. 15. Evidence of minutes, etc

15. All notices given by the secretary of the company by order of the directors shall be deemed notices by the directors of the company. R.S.O. 1914, c. 185, s. 16. Effect of notices by secretary.

Powers and Duties of Directors.

- Election of board of directors.** **16.**—(1) A board of directors of the company to manage its affairs, the number of whom shall be stated in the special Act, and a majority of whom shall form a quorum, shall be chosen at the annual meeting, and if such election is not held on the day appointed therefor the directors shall cause such election to be held at a special meeting duly called for that purpose within as short a time as possible after the day so appointed.
- Time.**
- Who entitled to vote.** (2) No person shall be admitted to vote at such special meeting unless he would have been entitled to vote had the election been held on the day on which it ought to have been held.
- Vacancies.** (3) Vacancies in the board of directors shall be filled in the manner prescribed by the by-laws.
- Qualification of directors.** (4) No person shall be a director unless he is a shareholder, owning at least ten shares absolutely in his own right, and qualified to vote for directors at the election at which he is chosen.
- When majority to be British subjects.** (5) If the company has received aid towards the construction of its railway or undertaking, or any part thereof, from the Government of Ontario, under any Act of this Legislature, a majority of its directors shall be British subjects.
- Term of office of directors.** (6) The directors appointed at the last election or those appointed in their stead, in case of vacancy, shall remain in office until the next ensuing election of directors.
- When directors may fill vacancies.** (7) So long as a quorum of directors remains in office vacancies in the board may be filled by such directors as remain in office.
- When no quorum.** (8) Whenever there is not a quorum of directors in office it shall be the duty of the remaining directors or director forthwith to call a meeting of the shareholders to fill the vacancies, and in default the meeting may be called by any shareholder.
- When no directors.** (9) If there are no directors remaining in office a meeting to elect directors may be called without service of any requisition.
- President.** (10) The directors shall, at their first or at some other meeting after the election, elect one of their number to be the president of the company who shall, when present, be the chairman at all meetings of the directors, and shall hold his office until he ceases to be a director, or until another president has been elected in his stead; and they may in like manner elect a vice-president who shall act as chairman in the absence of the president.
- Vice-president.**

(11) The directors, at any meeting at which not less than ^{Powers of quorum.} a quorum are present, shall be competent to use and exercise all and any of the powers vested in the directors.

(12) The act of a majority of a quorum of the directors ^{Powers of majority of quorum.} present at any meeting regularly held shall be deemed the act of the directors.

(13) No director shall have more than one vote at any ^{Casting vote.} meeting, except the chairman, who shall, in case of a division of equal numbers, have the casting vote. R.S.O. 1914, c. 185, s. 17.

17. The directors shall be subject to the control of the ^{Submission of directors to control of shareholders and to by-laws.} shareholders at their annual meetings, and to all by-laws of the company, and to the orders and directions from time to time made at the annual or at any special meetings, such orders and directions not being contrary to any express directions or provisions of this Act or the special Act. R.S.O. 1914, c. 185, s. 18.

18.—(1) No person concerned or interested in any con- ^{Contractors with company not to be directors.} tract under or with the company, or being surety for any contractor, shall be capable of being chosen a director, or of holding or continuing in the office of director or provisional director, nor shall any person being a director or provisional director or promoter of the company enter into or be directly or indirectly interested or concerned in or participate in the profit of any contract with the company, not relating to the purchase of land necessary for the railway, or be or become a partner of any contractor with the company.

(2) If any such contract is made by or on behalf of any ^{Liability of person offending.} director or provisional director or promoter an action shall lie against him at the suit of any shareholder or of the corporation of any municipality through which any part of the railway passes, for the benefit of the funds of the company, for the whole amount of profit accruing to such director, provisional director or promoter from the contract. R.S.O. 1914, c. 185, s. 19.

19.—(1) The directors may make rules, regulations and ^{Power of directors to make regulations.} by-laws, not inconsistent with this Act, for the management and disposition of the shares, property, business and affairs of the company, and for the appointment of all officers, servants and artificers, and for prescribing their duties and salaries.

(2) The directors may also employ and pay one of their ^{Manager.} number as managing director. R.S.O. 1914, c. 185, s. 20.

20. The directors may appoint such officers as they deem ^{Appointment of officers.} requisite, and shall take sufficient security from the manager and officers for the safe keeping and accounting by them of

the money raised by virtue of this Act and the special Act, and for the faithful execution of their offices. R.S.O. 1914, c. 185, s. 21.

Retirement
of officers,
etc.

21. The directors may by by-law or resolution provide for the retirement of any of the company's officers and servants, on such terms as to an annual allowance or otherwise, as the directors, in the interest of the company's service and under the circumstances, consider just and reasonable. R.S.O. 1914, c. 185, s. 22.

Remunera-
tion of
directors.

22. The directors may be paid such reasonable remuneration for their services as may be sanctioned by the shareholders by resolution passed at the annual general meeting to be held for the purpose of electing the successors of such directors. R.S.O. 1914, c. 185, s. 23.

Acting
president.

23. In case of the absence or illness of the president, the vice-president, and in case of the absence or illness of the president and vice-president, a director appointed by the directors for that purpose shall have all the rights and powers of the president, and may sign all debentures and other instruments, and perform all acts which, by the regulations and by-laws of the company or by this Act, are required to be signed, performed or done by the president. R.S.O. 1914, c. 185, s. 24.

Noting
absence of
president, etc
in minutes.

24. The directors may at any meeting require the secretary to enter a note of such absence or illness upon the minutes of the meeting, and a certificate thereof signed by the secretary shall be delivered to any person requiring the same on payment of \$1, and such certificate shall be *prima facie* evidence of such absence, or illness at and during the period mentioned in the certificate. R.S.O. 1914, c. 185, s. 25.

Evidence.

Accounts.

25. The directors shall cause to be kept, and, annually on the 31st day of December, shall cause to be made up and balanced a true, exact and particular account of all money received by the company, or by the directors or manager thereof, or otherwise for the use of the company, and of the charges and expenses attending the erecting, making, supporting, maintaining and carrying on of the undertaking, and of all other receipts and expenditures of the company. R.S.O. 1914, c. 185, s. 26.

Calls.

Calls.

26.—(1) The directors may from time to time make such calls, not exceeding ten per centum of the amount subscribed, upon the shareholders, in respect of the amount of capital

respectively subscribed or owing by them, as they deem necessary, and thirty days' notice at the least shall be given of each call; and no call shall exceed the prescribed amount determined in the special Act, or be made at a less interval than two months from the previous call, nor shall a greater amount be called in, in any one year, than the amount prescribed in the special Act; but nothing herein shall prevent the directors from making more than one call by one resolution if the intervals between such calls, the notices of each call, and the other provisions of this Act and of the special Act, in respect of calls, are duly observed and given.

Notice.

(2) All notices of calls shall be published in the *Ontario* Publication. *Gazette*.

(3) Every shareholder shall be liable to pay the amount of the call to the persons and at the times and places from time to time appointed by the company or the directors.

Liability for payment of calls.

(4) Interest shall accrue upon the amount of any unpaid call from the day appointed for the payment thereof to the time of the actual payment.

Interest on unpaid calls.

(5) In an action to recover money due upon a call it shall be sufficient to state that the defendant is the holder of one share or more, stating the number of shares, and is indebted in the sum of money to which the calls in arrear amount, stating the number and amount of each call, whereby an action has accrued to the company by virtue of the special Act. R.S.O. 1914, c. 185, s. 27.

What allegations necessary in actions for calls.

Shares and Their Transfer.

27.—(1) The shares of the company shall be deemed personal estate and shall be transferable on the books of the company in such manner and subject to such conditions and restrictions as, by this Act, the special Act, the letters patent, supplementary letters patent or by-laws of the company, may be prescribed.

Shares to be deemed personal estate, how transferable.

(2) Subject to subsection 1 no by-law shall be passed which in any way restricts the rights of a holder of paid up shares to transfer the same, but nothing in this section shall prevent the regulation of the mode of transfer thereof. R.S.O. 1914, c. 185, s. 28.

No restrictions upon transfer of paid-up shares.

28. No transfer of shares, the whole amount whereof has not been paid up, shall be made without the consent of the directors. R.S.O. 1914, c. 185, s. 29.

Transfer of shares not paid up.

29. If any share is transmitted by the death, bankruptcy, or last will, donation or testament, or by the intestacy of any shareholder, or by any lawful means other than the transfer hereinbefore mentioned, the person to whom such

Transmission of shares, other than by transfer, provided for.

share is so transmitted shall deposit in the office of the company a statement, in writing signed by him, declaring the manner of such transmission, together with a duly certified copy or probate of such will, donation or testament, or sufficient extracts therefrom, and such other documents or proof as may be necessary and until that has been done such person shall not be entitled to receive any share of the profits of the company, or to vote in respect of any such share as the holder thereof. R.S.O. 1914, c. 185, s. 30.

Company
not bound
to see to
execution
of trusts.

30. The company shall not be bound to see to the execution of any trust, whether express, implied or constructive, to which the share may be subject; and the receipt of the person in whose name any share stands in the books of the company, or if it stands in the names of more persons than one, the receipt of one of the persons named in the register of shareholders, shall be a sufficient discharge to the company for any dividend or other sum of money payable in respect of the share, notwithstanding any trust to which the share may then be subject, and whether or not the company has had notice of the trust; and the company shall not be bound to see to the application of the money paid upon such receipt. R.S.O. 1914, c. 185, s. 31.

Prima facie
evidence of
title.

31. The certificate of proprietorship of a share shall be *prima facie* evidence of the title of the person named therein, his executors, administrators, successors or assigns, to such share. R.S.O. 1914, c. 185, s. 32.

Non-pay-
ment of
calls.

Forfeiture.

32.—(1) Every shareholder who makes default in the payment of any call payable by him, together with the interest, if any, accrued thereon, for the space of two months after the time appointed for the payment thereof, shall forfeit to the company his shares in the company and all the profit and benefit thereof.

When
forfeiture
enforceable.

(2) No advantage shall be taken of the forfeiture unless the shares are declared to be forfeited at a general meeting of the company, assembled at any time after such forfeiture has been incurred. R.S.O. 1914, c. 185, s. 33.

Effect of
forfeiture.

33. Every shareholder so forfeiting shall be by such forfeiture, relieved from liability in all actions, suits or prosecutions whatsoever which may be commenced or prosecuted against him for any breach of the contract existing between such shareholder and the other shareholders by reason of such shareholder having subscribed for or become the holder of the shares so forfeited. R.S.O. 1914, c. 185, s. 34.

Sale of
forfeited
shares.

34.—(1) The directors may, subject as hereinafter provided, sell, either by public auction or private sale, any shares so declared to be forfeited, upon authority therefor

having been first given by the shareholders, either at the general meeting at which such shares were declared to be forfeited or at any subsequent general meeting.

(2) The directors shall not sell or transfer more of the shares of any such defaulter than will be sufficient, as nearly as can be ascertained at the time of such sale, to pay the arrears then due from such defaulter on account of any calls, together with interest, and the expenses attending such sale and declaration of forfeiture. Limitation. proceeds to defaulter.

(3) If the money produced by the sale of any such forfeited shares is more than sufficient to pay all arrears of calls and interest thereon due at the time of such sale, and the expenses attending the declaration of forfeiture and the sale of such shares, the surplus shall, on demand, be paid to the defaulter. Surplus proceeds to defaulter.

(4) If payment of such arrears of calls and interest and expenses is made before any share so forfeited and vested in the company is sold, such share shall revert to the person to whom it belonged before such forfeiture, who shall be entitled thereto as if such calls had been duly paid. Payment of arrears before sale.

(5) Any shareholder may purchase any forfeited share so sold. Who may purchase. R.S.O. 1914, c. 185, s. 35.

35.—(1) A certificate of the treasurer of the company that any share of the company has been declared forfeited for non-payment of any call, and that such share has been purchased by a purchaser therein named shall, together with the receipt of the treasurer of the company for the price of such share, constitute a good title thereto. Certificate of treasurer to constitute title.

(2) Such certificate shall be registered by the treasurer in the name and with the place of abode and occupation of the purchaser, and shall be entered in the books to be kept by the company, and such purchaser shall thereupon be deemed to be the holder of such share. To be registered.

(3) The purchaser shall not be bound to see to the application of the purchase money. Purchase money.

(4) The title of the purchaser to such share shall not be affected by any irregularity in the proceedings in reference to such sale. Irregularity. R.S.O. 1914, c. 185, s. 36.

36.—(1) A shareholder who is willing to advance the amount of his shares, or any part of the money due upon his shares beyond the sums actually called for, may pay the same to the company. Right to pay in advance of calls.

(2) Upon the principal money so paid in advance, or so much thereof as, from time to time, exceeds the amount of the calls then made upon the shares in respect to which such Interest on advance made by shareholder to company.

advance is made, the company may pay interest, at such rate as the shareholders who pay such sum in advance and the company agree upon.

Condition.

(3) Such interest shall not be paid-out of the capital subscribed. R.S.O. 1914, c. 185, s. 37.

Shareholders.

Extent of
shareholders'
liability.

37. Every shareholder shall be individually liable to the creditors of the company for the debts and liabilities of the company to an amount equal to the amount unpaid on the stock held by him, and until the whole amount of his stock has been paid up; but no action shall be instituted or maintained against any shareholder in respect of such liability until an execution at the suit of the creditor against the company has been returned unsatisfied in whole or in part. R.S.O. 1914, c. 185, s. 38.

Account of
names and
residence
of share-
holders to
be kept.

38. A true and perfect account of the names and places of abode of the several shareholders shall be entered in a book to be kept for that purpose, as well as of the several persons who from time to time become proprietors of or entitled to any shares therein, and of all the other acts, proceedings and transactions of the company and of the directors for the time being and such account shall be open to the inspection of the shareholders. R.S.O. 1914, c. 185, s. 39.

And of all
proceedings.

Rights of
aliens or
non-residents

39. All shareholders in the company, whether British subjects or aliens, or resident in Ontario or elsewhere, shall have equal rights to hold stock in the company, and to vote on the same, and, subject as herein provided, shall be eligible to office in the company. R.S.O. 1914, c. 185, s. 40.

Preference Stock.

By-law
for issuing.

40.—(1) The directors may pass by-laws for creating and issuing any part of the capital stock as preference stock, giving the same such preference and priority as respects dividends and otherwise over ordinary stock as may be declared by the by-law.

Special
rights of
preference
share-
holders.

(2) The by-law may provide that the holders of shares of such preference stock shall have the right to elect a certain stated proportion of the board of directors, or may give them such other control over the affairs of the company as may be considered expedient.

Unanimous
sanction
required.

(3) Subject to subsection 4 no such by-law shall have any force or effect until it has been unanimously sanctioned by a vote of the shareholders present, in person or by proxy, at a general meeting of the company duly called for considering the same, or unanimously sanctioned in writing by the shareholders of the company.

(4) If the by-law is sanctioned by three-fourths in value of the shareholders the company may apply to the Board for an order approving the by-law, and the Board may approve thereof and from the date of such approval the by-law shall be valid and may be acted upon. Approval of Board.

(5) Holders of shares of such preference stock shall be shareholders within the meaning of this Act, and shall in all respects possess the rights and be subject to the liabilities of shareholders, except that in respect of dividends and otherwise they shall, as against the ordinary shareholders, be entitled to the preferences and rights given by such by-law. Rights and liabilities of preference shareholders.

(6) Nothing in this section or done in pursuance of it shall affect or impair the rights of creditors of the company. Rights of creditors preserved.
R.S.O. 1914, c. 185, s. 41.

Dividends and Interest.

41. Dividends, at and after the rate of so much per share upon the several shares held by the shareholders in the stock of the company, may, from time to time, be declared and paid by the directors out of the net profits of the undertaking. R.S.O. 1914, c. 185, s. 42. Declaration of dividends.

42.—(1) The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing, maintaining, renewing or extending the railway or any portion thereof, and shall submit their action in regard to such reserve fund to the shareholders at a general meeting for their approval. Reserve fund.

(2) The directors may invest the sum so set apart as a reserve fund in such securities, not inconsistent with this or the special Act as they select. R.S.O. 1914, c. 185, s. 43. Investment of same.

43. No dividend shall be

- (a) declared whereby the capital of the company is in any degree reduced or impaired; or Dividend not to impair capital, etc.
- (b) paid out of such capital; or
- (c) paid in respect of any share after a day appointed for payment of any call in respect thereof, until such call has been paid, Calls to be paid.

but the directors may, in their discretion, until the railway is completed and opened to the public, pay interest, at any rate not exceeding five per centum per annum, on all sums actually paid in cash in respect of the shares, from the respective days on which the same have been paid; and such Interest may be paid on calls pending opening of road.

interest shall accrue and be paid at such time and places as the directors appoint for that purpose. R.S.O. 1914, c. 185, s. 44. .

None on
calls in
arrear.

44. No interest shall accrue to any shareholder in respect of any share upon which any call is in arrear, or in respect of any other share held by such shareholder while such call remains unpaid. R.S.O. 1914, c. 185, s. 45.

Deduction
of arrears
or calls
from divi-
dends.

45. The directors may deduct from any dividend payable to any shareholder all or any such sum or sums of money as are due from him to the company on account of any call or otherwise. R.S.O. 1914, c. 185, s. 46.

Bonds, Mortgages, and Borrowing Powers.—Foreclosure.
See section 137 of R.S.C. cap. 37.

When
issue of
securities
authorized.

46.—(1) The directors, under the authority of the shareholders, given at a special meeting called for the purpose or at any annual meeting for which like notice of intention to apply for such authority has been given as is required in the case of a special meeting, and at which meeting, whether annual or special, shareholders representing at least two thirds in value of the subscribed stock of the company and who have paid all calls due thereon are present in person or represented by proxy, may, subject to the provisions in this Act and the special Act contained, issue bonds, debentures, perpetual or terminating debenture stock, or other securities, signed by the president or other presiding officer and countersigned by the secretary, which countersignature and the signature to the coupons attached to the same may be engraved; and such securities may be made payable at such times and in such manner and at such place or places in Canada or elsewhere as the directors think proper, and may bear such rate of interest per annum as may be approved by the Board. R.S.O. 1914, c. 185, s. 47 (1); 1922, c. 66, s. 2.

Presence of
shareholders.

When and
where pay-
able.

Interest.

Limit of
bonding
powers.

(2) Such securities shall not exceed the amount authorized by the special Act and may be issued only in proportion to the length of railway constructed or under contract to be constructed.

Raising
money on
securities.

(3) The directors may, for the purpose of raising money for prosecuting the undertaking, issue and sell or pledge all or any of such securities.

Denomina-
tions.

(4) No such security shall be for a less sum than \$100.

Continuance
of right to
issue
securities.

(5) The power of issuing securities conferred by this or the special Act shall not be exhausted by any issue; but may be exercised from time to time upon the securities constituting the issue being withdrawn or paid off and duly cancelled; but in no case shall the limit fixed in the special Act be exceeded. R.S.O. 1914, c. 185, s. 47 (2-5).

Limit.

47.—(1) The company may secure such bonds, debentures, debenture stock or other securities, by a deed creating such mortgage, charge or incumbrance upon the whole of such property, assets, rents and revenues of the company, present or future or both, as are described in the deed; but the same shall be subject in the first instance to the payment of any penalty imposed for non-compliance with the requirements of this Act and next to the payment of the working expenditure of the railway. ^{Mortgages securing bonds, etc.} ^{How ranked.}

(2) By the deed the company may grant to the holders of such securities, or the trustees named in the deed, the powers, rights and remedies granted by this Act in respect of such securities, and all other powers, rights and remedies, not inconsistent with this Act, or may restrict the holders in the exercise of any power, privileges or remedy granted by this Act, and all the powers, rights and remedies so provided for shall be valid and binding and available to the holders in manner and form as therein provided. ^{Powers conferred on holders.}

(3) The company may except from the operation of any such deed any property, assets, rents or revenue of the company, and may declare and provide therein that such mortgage shall only apply to and affect certain sections or portions of the railway or property of the company, but where any such exception is made, the company shall in such deed expressly specify and describe, with sufficient particularity to identify the same, the property, assets, rents or revenue of the company, or the sections or portions of the railway not intended to be included therein or conveyed thereby. ^{Exception of part of assets.} ^{Must be specified.}

(4) Every such deed, and every assignment thereof or other instrument in any way affecting such mortgage or security, shall be deposited in the office of the Board, of which deposit notice shall forthwith be given in the *Ontario Gazette*; and such deed or other instrument need not be registered under the provisions of any law respecting registration of instruments affecting real or personal property. ^{Mortgage to be deposited with the Board and notice given.}

(5) A copy of any such deed or instrument so deposited and certified to be a true copy by the Secretary, shall be *prima facie* evidence of the original without proof of the signature of such official. ^{Evidence.} R.S.O. 1914, c. 185, s. 48.

48.—(1) Subject as hereinbefore provided to the payment of penalties, and to the working expenditure of the railway and to any restriction or exception contained in the deed, the securities hereby authorized to be issued shall be the first preferential claim and charge upon the company, and the franchise, undertaking, tolls and income, rents and revenues, and real and personal property thereof, at any time acquired. ^{Effect of securities as a preferential charge.}

Holders
ranked
pro rata.

(2) Each holder of such securities shall be deemed to be a mortgagee or incumbrancer upon the securities, *pro rata* with all the other holders, but no proceeding authorized by law or by this Act, shall be taken to enforce payment of such securities or of the interest thereon except through the trustee or trustees appointed by or under the deed. R.S.O. 1914, c. 185, s. 49.

Rights of
holders of
securities
upon default
in payment.

49.—(1) If the company makes default in paying the principal of or interest on any of such securities, at the time when the same becomes due and payable, then at the next annual general meeting of the company, and at all subsequent meetings, all holders of securities so being and remaining in default shall, in respect thereof, have the same rights and privileges and qualifications for being elected directors and for voting at general meetings as would attach to them as shareholders if they held fully paid up shares of the company to a corresponding amount.

Right of
holders
to vote
at meetings,—
how de-
termined.

(2) Each such holder shall, for the purpose of voting at any such meeting, be deemed to be a shareholder and shall be entitled to as many votes as if he held shares in the company on which all calls had been paid, equal at a par valuation to the amount of such securities so held by him, and may vote by proxy in like manner and to the same extent as a shareholder; but no person who is not himself a holder of such security or a shareholder in the company shall be qualified to be appointed a proxy.

Proxies.

Limitation
of right of
voting.

(3) The rights given by this section shall not be exercised by any such holder unless it is so provided by the deed, nor unless the security in respect of which he claims to exercise such rights has been registered in his name, in the same manner as the shares of the company are registered, at least ten days before he attempts to exercise the right of voting thereon; and the company shall be bound on demand to register such securities, and thereafter any transfers thereof in the same manner as shares or transfers of shares.

Other rights
under mort-
gage deed
preserved.

(4) The exercise of the rights given by this section shall not take away, limit or restrict any other of the rights or remedies to which the holders of the securities are entitled under the provisions of the deed. R.S.O. 1914, c. 185, s. 50.

Mode of
transfer of
securities.

50. All securities hereby authorized may be made payable to bearer, and shall in that case be transferable by delivery, until registration thereof as hereinbefore provided, and while so registered they shall be transferable by written transfers, registered in the same manner as the transfers of shares. R.S.O. 1914, c. 185, s. 51.

As to deposit of mortgage to secure bonds covering rolling stock hired to company, see Bills of Sale and Chattel Mortgage Act, Rev. Stat. c. 164.)

51.—(1) The company may, for the purposes of the undertaking, borrow money by overdraft or upon promissory note, bill of exchange, warehouse receipt, or otherwise upon the credit of the company, and become party to promissory notes and bills of exchange.

Borrowing money by overdraft or negotiable instrument.

(2) Every such note or bill made, drawn, accepted or endorsed, by the president or vice-president, or other officer authorized by the by-laws, and countersigned by the secretary, shall be binding on the company; and shall be presumed to have been made, drawn, accepted or endorsed with proper authority, until the contrary is shown.

Binding nature of instrument.

Presumption.

(3) It shall not be necessary to have the seal of the company affixed to such promissory note or bill of exchange, nor shall the president or vice-president or secretary or other officer so authorized be individually responsible for the same, unless such promissory note or bill of exchange has been issued without proper authority.

No seal necessary.

(4) Nothing in this section shall be construed to authorize the company to issue any note or bill payable to bearer, or intended to be circulated as money or as the note or bill of a bank. R.S.O. 1914, c. 185, s. 52.

Notes not to be payable to bearer.

52.—(1) In this section

Interpretation.

- (a) "Purchaser" shall include a mortgagee or his assigns who has obtained title by foreclosure;
- (b) "Conveyance" shall include a judgment or order for foreclosure.

"Purchaser."

"Conveyance."

(2) Every mortgage heretofore or hereafter made by a railway, electric railway, street railway or incline railway company may be enforced by judgment for foreclosure or sale in the same manner and to the same extent as such mortgage could be so enforced if the same had been made by a company not incorporated for any public purpose.

Enforcing mortgages.

(3) If a railway, electric railway, street railway or incline railway, or any section thereof is sold under the provisions of any deed or mortgage, or at the instance of the holders of any mortgage, bonds or debentures, for the payment of which any charge has been created thereon, or under any other lawful proceeding, and is purchased by any person not having corporate power to hold and operate the same, the purchaser shall not run or operate such railway, electric railway or street railway, or incline railway until authority therefor has been obtained as in this section provided.

Purchaser without corporate powers to obtain authority to operate.

(4) The purchaser shall transmit to the Provincial Secretary an application in writing stating the fact of such purchase, describing the termini and lines of route of the railway, electric railway, street railway or incline railway pur-

Application to Provincial Secretary by purchaser.

chased, specifying the charter or special Act under which the same was constructed and operated, and requesting authority to run and operate the same, and shall, with such application, transmit a copy of any writing preliminary to the conveyance of such railway, electric railway, street railway, or incline railway, made as evidence of such sale, and also a duplicate or authenticated copy of the deed of conveyance of such railway, electric railway, street railway or incline railway, and such further details and information as the Provincial Secretary may require.

Interim
authoriza-
tion by
Provincial
Secretary.

(5) Upon any such application, the Provincial Secretary may, if he is satisfied therewith, grant an order authorizing the purchaser to run and operate the railway purchased until the end of the then next session of this Legislature, subject to such terms and conditions as the Provincial Secretary may deem expedient.

How far
purchaser
thereupon
authorized
to operate
railway.

(6) The purchaser shall thereupon be authorized, for such period only and subject to such order, to operate such railway, electric railway, street railway, or incline railway, and to take and receive such tolls in respect of traffic carried thereon as the company previously owning and operating the same was authorized to take, and the purchaser shall also be subject to the terms and conditions of the charter or special Act of the said company in so far as the same can be made applicable.

Application
to Legis-
lature.

(7) Such purchaser shall apply to this Legislature at the next following session thereof after the granting of such order by the Provincial Secretary, for an Act of incorporation or other legislative authority, to hold, operate and run the railway.

One
extension
allowed.

(8) If such application is made and is unsuccessful the Provincial Secretary may extend the order to run and operate the railway until the end of the then next following session of this Legislature, and no longer.

Closing
of road.

(9) If, during such extended period, the purchaser does not obtain such Act of incorporation or other legislative authority such railway shall be closed or otherwise dealt with by the Provincial Secretary as may be determined by the Lieutenant-Governor in Council. R.S.O. 1914, c. 185, s. 53.

POWERS.

General Powers.

Of com-
pany.

53. The company may, for the purposes of the undertaking, subject to the provisions in this and the special Act contained,

- (a) enter into and upon any land of any person whomsoever lying in the intended route or line of the railway, and make surveys, examinations or other necessary arrangements on such land for fixing the site of the railway, and set out and ascertain such parts of the land as are necessary and proper for the railway;
Entry upon land. Surveys.
- (b) receive, take and hold, all voluntary grants and donations of land or other property or any bonus of money or debentures, or other benefit of any sort made to it for the purpose of aiding in the construction, maintenance and accommodation of the railway; but the same shall be held and used for the purpose of such grants or donations only;
Receive grants and bonuses.
- (c) purchase, take and hold of and from any person any land or other property necessary for the construction, maintenance and operation of the railway, and also alienate, sell or dispose of any land or property of the company which for any reason has become not necessary for the purposes of the railway;
Acquire property. Dispose of property not required.
- (d) make, carry or place the railway across or upon the land of any person on the located line of the railway;
Placing of railway.
- (e) cross any railway, or join the railway with any other railway at any point on its route, and upon the land of such other railway, with the necessary conveniences for the purposes of such connection, and the owners of both railways may unite in forming such intersection and grant the facilities therefor; and the amount of compensation to be made therefor, the point and manner of such crossing and connection shall be determined by the Board, as provided by this Act;
Cross and connect with other railways.
- (f) make, complete, operate, alter and maintain the railway with one or more sets of rails or tracks, to be worked by the force or power of steam, electricity, or of the atmosphere, or by mechanical power, or any combination of them;
Construction and operation of railway.
- (g) construct, erect, and maintain all necessary and convenient roads, buildings, stations, depots, wharfs, docks, elevators, and other structures, and construct, purchase and acquire stationary or locomotive engines, rolling stock, and other apparatus necessary for the accommodation and use of the traffic and business of the railway;
Buildings, equipment, etc.

Branch
railways.

(h) make branch railways, and manage the same, and for that purpose exercise all the powers, privileges and authority necessary therefor, in as full and ample a manner as for the railway;

Transport
passengers
and freight.

(i) take, transport, carry and convey persons and goods on the railway, and regulate the time and manner in which the same shall be transported, and the tolls to be charged therefor;

Remove
trees.

(j) fell or remove any trees which stand within one hundred feet from either side of the right of way of the railway, or which are liable to fall across any railway track;

Make tun-
nels and
other
works.

(k) make or construct in, upon, across, under or over any railway, tramway, river, stream, watercourse, canal, or highway, which the railway intersects or touches, temporary or permanent inclined planes, tunnels, embankments, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, arches, cuttings and fences;

Divert
highways
and water-
ways.

(l) divert or alter, as well temporarily as permanently, the course of any such river, stream, watercourse, or highway, or raise or sink the level thereof, in order the more conveniently to carry the same over, under or by the side of the railway;

Construct
drains.

(m) make drains or conduits into, through or under any land adjoining the railway, for the purpose of conveying water from or to the railway;

Divert
drains,
pipes and
wires.

(n) with the consent of the Board, after notice to any person interested, divert or alter the position of any water-pipe, gas-pipe, sewer, or drain, or any telegraph, telephone or electric lines, wires or poles;

Alter and
substitute
other works.

(o) with the consent of the Board, after notice to any person interested, from time to time alter, repair or discontinue the works hereinbefore mentioned, or any of them, and substitute others in their stead; and

Other
necessary
acts.

(p) do all other acts necessary for the construction, maintenance and operation of the railway. R.S.O. 1914, c. 185, s. 54.

Navigable Waters.

Duty not to
obstruct
navigation.

54. No company shall cause any obstruction in, or impede the free navigation of any river, water, stream or canal, to, upon, along, over, under, through or across which its railway is carried. R.S.O. 1914, c. 185, s. 55.

55. No company shall run its trains over any canal or over any navigable water without having first laid, and without maintaining, such proper flooring under and on both sides of its railway track over such canal or water as is deemed by the Board sufficient to prevent anything falling from the railway into such canal or water, or upon the boats, vessels, craft, or persons navigating such canal or water. R.S.O. 1914, c. 185, s. 56. Proper flooring of bridges.

Compensation.

56. The provisions for the ascertainment of compensation contained in clause (e) of section 53 shall not extend or apply to any railway incorporated under an Act of this Legislature when it is proposed that such railway shall cross, intersect, join, or unite with, or be crossed, intersected, joined or united with a railway within the legislative authority of the Parliament of Canada. R.S.O. 1914, c. 185, s. 57. Application of s. 53 (e).

57. The company shall restore, as nearly as possible, to its former state any river, stream, watercourse, highway, water-pipe, gas-pipe, sewer or drain, or any telegraph, telephone or electric line, wire or pole, which it diverts or alters, or it shall put the same in such a state as not materially to impair the usefulness thereof. R.S.O. 1914, c. 185, s. 58. Duty of restoration.

58. The company shall, in the exercise of the powers by this or the special Act granted, do as little damage as possible, and shall make full compensation, in the manner herein and in the special Act provided, to all persons interested for all damage by them sustained by reason of the exercise of such powers. R.S.O. 1914, c. 185, s. 59. Compensation for damage.

Taking or using Land of Other Companies.

59.—(1) The company may take possession of, use or occupy any land belonging to any other railway company, use and enjoy the whole or any portion of the right of way, tracks, terminals, stations or station grounds of any other railway company, and have and exercise full right and power to run and operate its trains over and upon any portion of the railway of any other railway company, subject always to the approval of the Board first obtained and to any order and direction which the Board may make in regard to the exercise, enjoyment or restriction of such powers or privileges. Use of land of other companies.
Approval of Board.

(2) Such approval may be given upon application and notice, and, after hearing, the Board may make such order, give such directions, and impose such conditions or duties upon either party as to it may appear just or desirable, having due regard to the public and all proper interests. Procedure therefor.

Compensation.

(3) If the companies fail to agree as to the compensation the Board may, by order, fix the amount of the compensation to be paid in respect of the powers and privileges so granted. R.S.O. 1914, c. 185, s. 60.

Public Land.

When and how far public lands, beaches, etc., may be occupied.

60.—(1) The company shall not take possession of, use or occupy any land belonging to Ontario without the consent of the Lieutenant-Governor in Council; but with such consent such company may take and appropriate for the use of its railway and works, but not alienate, so much of the wild lands lying on the route of the railway as have not been granted or sold, and as may be necessary for the railway, as also so much of the public beach or of the land covered with the waters of any lake, river, stream or canal, or of their respective beds, as is necessary for making and completing and using its railway and works.

Limitation.

(2) The extent of the public beach or of the land covered with the water of any river or lake taken for the railway shall not exceed the quantity limited in section 80. R.S.O. 1914, c. 185, s. 61.

Telegraph, telephone and other lines.

Power to erect telegraph and telephone lines.

61.—(1) Except as provided in section 62 the company may construct and operate an electric telegraph line and a telephone line throughout and along the whole line of railway, and the branches thereof, or any part of the railway or branches, and for the purpose of constructing, working and protecting such telegraph and telephone lines, the powers conferred upon telegraph companies by *The Telegraph Companies Act* are hereby conferred upon the company; but no poles shall be erected in the construction of such lines in or through any city, town or village except under an agreement with the corporation of such city, town or village, or in default of such agreement by leave of the Board and upon such terms and conditions as it may prescribe.

Rev. Stat. c. 220.

Limitation.

(2) Such telegraph and telephone lines shall be used exclusively for the purposes of the business of the company.

Use of lines.

Other telephone systems, connections with.

(3) Where any municipal corporation or person has authority to construct, operate and maintain a telephone system in any locality, and is desirous of obtaining connection or communication with or within any station or premises of the company in such locality, and cannot agree with the company with respect thereto, such municipal corporation or person may apply to the Board, and the Board may order the company to provide for such connection or communication upon such terms as to compensation as the Board deems just, and

the Board may order and direct how, when, where, by whom Terms. and upon what terms and conditions such connection or communication shall be constructed, operated and maintained.

(4) Notwithstanding anything in any Act contained, the Board, in determining the terms or compensation upon which any such connection or communication is to be provided for, shall not take into consideration any contract, lease or agreement now or hereafter in force by which the company has given or gives any exclusive or other privilege to any company or person, other than the applicant, with respect to any such station or premises. Contracts giving exclusive privileges not to be taken into consideration. R.S.O. 1914, c. 185, s. 62.

62.—(1) No lines or wires, for telegraphs, telephones or the conveyance of light, heat, power or electricity, shall be erected, placed or maintained across a railway without the leave of the Board. Wires, etc., across railway.

(2) Upon an application for such leave the applicant shall submit to the Board a plan and profile of the part of the railway proposed to be affected, showing the proposed location of such lines and wires and the works contemplated in connection therewith. Submission of plans to Board.

(3) The Board may grant such application and may order by whom, how, when, and on what terms and conditions, and under what supervision, such work shall be executed. Order by Board.

(4) Upon such order being made such lines and wires may be erected, placed and maintained across the railway subject to and in accordance with such order. Erecting.

(5) An order of the Board shall not be required in cases in which wires or other conductors for the transmission of electrical energy are to be erected or maintained over or under a railway, or over or under wires or other conductors for the transmission of electrical energy, with the consent of the railway company or the company owning or controlling such last mentioned wires or conductors, in accordance with any general regulations, plans or specifications adopted or approved by the Board. Order dispensed with where compliance with general regulations. R.S.O. 1914, c. 185, s. 63.

63. The Board shall prescribe rules and regulations and standard plans and specifications to be adhered to in carrying lines of wires to be used for telephone and telegraph purposes across the railway, and no lines of such wires shall thereafter be carried across the railway in any other way or on any other terms without the leave of the Board, but in special cases, on the application of any person or corporation to be affected by such crossing, the Board may order that such crossing shall be made in some other manner than that prescribed by the standard plans and specifications. General rules and regulations of Board. R.S.O. 1914, c. 185, s. 64. Proviso.

Interchange of Traffic.

One company may agree with another respecting traffic

64.—(1) The directors may, at any time and from time to time, make and enter into any agreement or arrangement, not inconsistent with this or the special Act, with any other company for the interchange of traffic between their railways or vessels and for the division and apportionment of tolls in respect of such traffic.

and agreements for

(2) The directors may also make and enter into any agreement or arrangement, not inconsistent with the provisions of this or the special Act, for any term not exceeding twenty-one years,—

Running powers.

(a) for the running of the trains of one company over the tracks of another company;

Division of tolls.

(b) for the division and apportionment of tolls in respect of such traffic;

Management and working.

(c) generally in relation to the management and working of the railways, or any of them, or any part thereof, and of any railway or railways in connection therewith; and

Joint committee.

(d) providing, either by proxy or otherwise, for the appointment of a joint committee for the better carrying into effect of any such agreement or arrangement, with such powers and functions as are considered necessary or expedient,

Conditions.

subject to the like consent of the shareholders, the sanction of the Board, application, notices and filing, as hereinafter provided with respect to amalgamation agreements, except that publication of notices in the *Ontario Gazette* shall be sufficient notice.

Board may exempt from conditions.

(3) The Board may, notwithstanding anything in this section, by order or regulation, exempt the company from complying with any of the foregoing conditions, with respect to any such agreement or arrangement made or entered into by the company for the transaction of its usual and ordinary business.

Saving.

(4) Neither the making of any such agreement or arrangement, nor anything therein contained, nor any approval thereof, shall restrict, limit, or affect any power by this Act vested in the Board or relieve the companies from complying with the provisions of this Act.

Penalty on companies or their officers refusing or neglecting to forward traffic as above required.

(5) If any officer, servant or agent of a railway company, having the superintendence of the traffic at any station or depot thereof, refuses or neglects to receive, convey or deliver at any station or depot of the company for which they may be destined any passenger, goods or things, brought, conveyed or delivered to him or to such company for conveyance over

or along the railway from that of any other company intersecting or coming near to such first-mentioned railway, or in any way wilfully contravenes the provisions of the next preceding subsection, such first-mentioned railway company or such officer, servant or agent, personally, shall, for every such neglect or refusal, incur a penalty not exceeding \$50 and shall in addition be liable to the person aggrieved for the actual damages sustained by reason of such wrongful act. Damages.

(6) In case any company or municipality interested is unable to agree as to the regulation and interchange of traffic or in respect of any other matter in this section provided for, the same shall be determined by the Board. Board to determine.

(7) All complaints made under this section shall be heard and determined by the Board. Complaints.

(8) This section shall apply to such street railways as may from time to time be determined by the Board. R.S.O. 1914, c. 185, s. 65. Street railways.

Amalgamation Agreements.

65.—(1) Where the company is authorized, by the special Act, to enter into an agreement with any other company for selling, conveying or leasing to such company the railway and undertaking of the company, in whole or in part, or for purchasing or leasing from the company its railway and undertaking, in whole or in part, or for amalgamation, such agreement shall be first approved by two-thirds of the votes of the shareholders of each company, party thereto, at any annual general meeting, or at a special general meeting, of each company called for the purpose of considering such agreement, at each of which meetings shareholders representing at least two-thirds in value of the capital stock of each company are present or represented by proxy. Agreement for sale, lease or amalgamation of railway.
Approval of shareholders.

(2) Upon such agreement being so approved and duly executed it shall be submitted to the Board for the sanction thereof. Sanction of Board.

(3) Notice of the proposed application for such sanction shall be published in the *Ontario Gazette* for at least one month prior to the time, to be stated therein, for the making of such application, and also, unless the Board otherwise orders, for a like period in one newspaper in each of the counties or districts through which the railway to be sold, leased or amalgamated runs in which a newspaper is published. Publishing notice of application.

(4) Upon such notice being given the Board shall grant or refuse the application, and upon such agreement being sanctioned it shall be filed in the office of the Board and thereupon shall come into force and effect, and notice thereof shall be forthwith given in the *Ontario Gazette*. Action of Board.
Proceedings upon sanction.
Notice.

Evidence
of compliance
with re-
quirements.

(5) The production of the *Ontario Gazette* containing such notice shall be *prima facie* evidence of the requirements of this section having been complied with. R.S.O. 1914, c. 185, s. 66.

Effect of
amalgama-
tion upon
properties,
powers and
liabilities.

66. Upon any agreement for amalgamation coming into effect, as provided in the last preceding section, the companies, parties to such agreement, shall, subject to the provisions of this Act and the special Act authorizing such agreement to be entered into, be deemed to be amalgamated, and shall form one company under the name and upon the terms and conditions in such agreement provided; and the amalgamated company shall possess and be vested with all the railways and undertakings, and all other the powers, rights, privileges, franchises, assets, effects, and properties belonging to, possessed by, or vested in the companies, parties to such agreement, or to which they, or any or either of them, may be or become entitled; and shall be liable for all claims, demands, rights, securities, causes of action, complaints, debts, obligations, works, contracts, agreements, or duties, to as full an extent as any or either of such companies was at or before the time when the amalgamation agreement came into effect. R.S.O. 1914, c. 185, s. 67.

Saving of
rights and
claims.

67.—(1) Notwithstanding anything in any agreement made or sanctioned under the provisions of the next preceding two sections, every act, matter or thing, done, effected or confirmed under or by virtue of this Act or the special Act, before the date of the coming into effect of such agreement, shall be as valid as if it had never come into effect; and such agreement shall be subject and without prejudice to every such act, matter or thing, and to all rights, liabilities, claims and demands, present or future, which would be incident to or consequent upon such act, matter or thing if such agreement had never come into effect.

Representa-
tion of
former
companies.

(2) In the case of an agreement for amalgamation, as to all acts, matters and things so done, effected or confirmed, and as to all such rights, liabilities, claims and demands, the amalgamated company shall for all purposes stand in the place of and represent the companies who are parties thereto; and the generality of the provisions of this section shall not be deemed to be restricted by any special Act, unless this section is expressly referred to in it and expressly limited or restricted thereby. R.S.O. 1914, c. 185, s. 68.

PLANS AND SURVEYS.

Map of
general
location
proposed.

68.—(1) The company shall prepare and submit to the Board a map showing the general location of the proposed line of the railway, the termini and the principal towns and places through which the railway is to pass, giving the names thereof, the railways, navigable streams and tidewaters, if any, to be crossed by the railway, and such as may be within

a radius of thirty miles of the proposed railway, and, generally, the physical features of the country through which the railway is to be constructed, and shall give such further or other information as the Board may require.

(2) Such map shall be prepared upon a scale of not less Scale. than six miles to the inch, or upon such other appropriate scale as the Board may determine, and shall be accompanied by an application, stating the special Act authorizing the Application. construction of such railway, and requesting the Board's approval of the general location as shown on the map.

(3) Before approving such map and location the Board Approval. may, subject to the special Act, make such changes and alterations therein as it may deem expedient, and, upon being satisfied therewith, shall signify its approval upon the map. Alterations.

(4) The map when so approved and the application shall Filing. be filed with the Board.

(5) The Board in approving of any such map and loca- Board tion may approve the whole or any portion thereof, and where may ap-
prove whole
or portion. it approves only a portion thereof it shall signify its approval upon the map accordingly.

(6) The provisions of this section shall only apply to the Application main line, and to branch lines over six miles in length. of section. R.S.O. 1914, c. 185, s. 69.

69.—(1) Upon compliance with the provisions of the last Plan, pro-
file and
book of
reference. preceding section the company shall make a plan, profile and book of reference of the railway.

(2) The plan shall show Plan.

- (a) the right of way, with lengths of sections in miles;
- (b) the names of terminal points;
- (c) the station grounds;
- (d) the property lines and owners' names;
- (e) the areas and length and width of land proposed to be taken, in figures, stating every change of width;
- (f) the bearings; and
- (g) all open drains, watercourses, highways and railways proposed to be crossed or affected.

(3) The profile shall show the grades, curves, highway and Profile. railway crossings, open drains and watercourses.

(4) The book of reference shall describe the portion of land Book of
reference. proposed to be taken in each lot to be traversed, giving number of the lots, and the area, length and width of the portion of each lot proposed to be taken, and the names of the owners and occupiers so far as they can be ascertained.

Further information.

(5) The Board may require any additional information for the proper understanding of the plan and profile.

Sections.

(6) The plan, profile and book of reference may be of a section or sections of the railway. R.S.O. 1914, c. 185, s. 70.

Sanction by Board.

70.—(1) Such plan, profile and book of reference shall be submitted to the Board which, if satisfied therewith, may sanction the same.

Effect.

(2) The Board by such sanction shall be deemed to have approved merely the location of the railway and the grades and curves thereof as shown in such plan, profile and book of reference, but not to have relieved the company from otherwise complying with this Act.

Board may sanction deviation of 1 mile.

(3) The Board may sanction a deviation of not more than one mile from any one point on the general location approved under section 68.

Further information.

(4) Before sanctioning any plan, profile or book of reference of a section of a railway the Board may require the company to submit the plan, profile and book of reference of the whole, or of any portion of the remainder of the railway, or such further or other information as the Board may deem expedient.

Time for acquiring land.

(5) In granting any such sanction the Board may fix a period (a) within which the company must acquire the land included in its right-of-way, or take the necessary steps for such purpose; or (b) within which the notices mentioned in section 89 shall be conclusively deemed to have been given; and in the event of the order granting such sanction, whether made before or after the passing of this Act, providing no such time limit, any owner or person interested in land included in the right of way, as shown by the plan, may apply to the Board for an order that the company shall acquire such lands or take the necessary steps for such purposes, within such time as the Board deems proper, and thereupon the Board may make such order in the premises as appears just. R.S.O. 1914, c. 185, s. 71.

For giving notice.

Deposit with Board.

71.—(1) The plan, profile and book of reference, when so sanctioned, shall be deposited with the Board, and plans shall be numbered consecutively in the order of their deposit.

In registry offices.

(2) The company shall also deposit copies thereof, or of such parts thereof as relate to each county or district through which the railway is to pass, duly certified as copies by the secretary, in the offices of the registrars of deeds for such counties or districts. R.S.O. 1914, c. 185, s. 72.

Errors.

72. The railway may be made, carried or placed across or upon the land of any person on the located line, although through error or any other cause the name of such person has

not been entered in the book of reference, or although some other person is erroneously mentioned as the owner of or entitled to convey, or is interested in such land. R.S.O. 1914, c. 185, s. 73.

73.—(1) Where any omission, misstatement or error is made in any plan, profile or book of reference so registered the company may apply to the Board for a certificate to correct the same. Corrections.
Procedure.

(2) The Board may require notice to be given to parties interested, and, if it appears to the Board that such omission, misstatement or error arose from mistake, may grant a certificate setting forth the nature of the omission, misstatement or error, and the correction allowed. Certificate
of correction.

(3) Upon the deposit of such certificate with the Board, and of copies thereof, certified as such by the Secretary, with the registrars of deeds of the counties or districts in which the lands are situate, the plan, profile or book of reference shall be taken to be corrected in accordance therewith, and the company may thereupon, subject to this Act, construct the railway in accordance with such correction. R.S.O. 1914, c. 185, s. 74. Deposit
of certificate
of correction.

74.—(1) Every registrar of deeds shall receive and pre-serve in his office all plans, profiles, books of reference, certified copies thereof, and other documents required by this Act to be deposited with him, and shall endorse thereon the day, hour and minute when the same were so deposited. Duties of
registrars
of deeds.

(2) All persons may resort to such plans, profiles, books of reference, copies and documents so deposited, and may make extracts therefrom, and copies thereof as occasion requires, paying the registrar therefor at the rate of ten cents for each hundred words so copied or extracted and ten cents for each copy made of any plan or profile. Extracts and
copies.
Fees.

(3) The registrar shall, at the request of any person, certify copies of any such plan, profile, book of reference, or document, so deposited in his office, or of such portions thereof as may be required, on being paid therefor at the rate of ten cents for each hundred words copied, and such additional sum for any copy of plan or profile furnished by him as is reasonable and customary in like cases, together with fifty cents for each certificate given by him. Certified
copies.
Fees.

(4) Such certificate shall set forth that the plan, profile or document, a copy of which, or of any portion of which, is certified by him, is deposited in his office, and shall state the time when it was so deposited, and that he has carefully compared the copy certified with the document on file, and that the same is a true copy of the original. Certificate
of registrar.

Documents deposited with registrar of deeds to be *prima facie* evidence.

(5) A copy of any plan, profile, book of reference, certified copy thereof, or other document, relating to the location or construction of any railway, and deposited, under the provisions of this Act, with the registrar of deeds of any district or county through which the railway passes, certified by such registrar, in the manner hereinafter required, to be a true copy, shall be *prima facie* evidence of the original so deposited, that such original was so deposited at the time certified thereon, and that the same was signed, certified, attested or otherwise executed by the persons by whom and in the manner in which such original purports to be signed, certified, attested or executed, as shown or appearing by such certified copy; and, in the case of a plan, that such plan is prepared according to a scale and in manner and form sanctioned by the Board. R.S.O. 1914, c. 185, s. 75.

Filing plan and profile of completed line with Board.

75.—(1) A plan and profile of the completed railway, or of any part thereof, which is completed and in operation, and of the land taken or obtained for the use thereof, shall, within six months after completion of the undertaking, or within six months after beginning to operate any such completed part, as the case may be, or within such extended or renewed period as the Board at any time directs, be made and filed with the Board.

In registry offices.

(2) Plans of the parts of such railway so completed or in operation located in different districts and counties, prepared on such a scale and in such manner and form, and signed or authenticated in such manner as the Board may from time to time, by general regulation or in any particular case, sanction or require, shall be filed in the registry offices for the counties or districts in which such parts are respectively situate. R.S.O. 1914, c. 185, s. 76.

Plans and profiles, how prepared.

76.—(1) All plans and profiles required by law to be deposited by the company with the Board shall be drawn to such scale, with such detail, upon such materials, and shall be of such character as the Board may, either by general regulation or in any particular case, sanction or require.

Certification.

(2) All such plans and profiles shall be certified and signed by the president or vice-president or general manager and also by the engineer of the company.

Book of reference.

(3) Any book of reference required to be so deposited shall be prepared to the satisfaction of the Board.

Board may refuse sanction.

(4) Unless and until such plan, profile and book of reference are so made satisfactory to the Board the Board may refuse to sanction the same, or to allow the same to be deposited with the Board. R.S.O. 1914, c. 185, s. 77.

Further plans, etc., as Board requires.

77. In addition to such plans, profiles and books of reference the company shall, with all reasonable expedition, prepare and deposit with the Board any other or further plans,

profiles, or books of reference of any portion of the railway, or of any siding, station or works thereof, which the Board may from time to time order or require. R.S.O. 1914, c. 185, s. 78.

78.—(1) If any deviation, change or alteration is required by the company to be made in the railway, or any portion thereof, as already constructed or as merely located and sanctioned, a plan, profile and book of reference of the portion of such railway proposed to be changed, showing the deviation, change or alteration proposed to be made, shall, in like manner as hereinbefore provided with respect to the original plan, profile and book of reference, be submitted for the approval of the Board, and may be sanctioned by the Board.

Deviations, changes or alterations.
Plan, profile, etc.
Sanction of Board.

(2) The plan, profile and book of reference of the portion of such railway so proposed to be changed shall, when so sanctioned, be deposited and dealt with as hereinbefore provided with respect to such original plan, profile and book of reference.

(3) The company may thereupon make such deviation, change, or alteration, and all the provisions of this Act shall apply to the portion of such line of railway so at any time changed or proposed to be changed in the same manner as they apply to the original line.

Company may carry out changes.

(4) The Board may, either by general regulation or in any particular case, exempt the company from submitting the plan, profile and book of reference, as in this section provided, where such deviation, change, or alteration, is made, or to be made, for the purpose of lessening a curve, reducing a gradient, or otherwise benefiting the railway, or for any other purpose of public advantage as may seem to the Board expedient, if such deviation, change, or alteration does not exceed three hundred feet from the centre line of the railway located or constructed in accordance with the plans, profiles and books of reference deposited with the Board under this Act.

Board may dispense with submission of material.

(5) Nothing in this section shall be taken to authorize any extension of the railway beyond the termini mentioned in the special Act. R.S.O. 1914, c. 185, s. 79.

Termini to be observed.

79.—(1) The company shall not commence the construction of the railway, or any section or portion thereof, until the plan, profile and book of reference has been submitted to and sanctioned by the Board as hereinbefore provided, nor until such plan, profile and book of reference so sanctioned has been deposited with the Board, and duly certified copies thereof with the registrars of deeds, in accordance with the provisions of this Act.

Commencement of works.

Changes.

(2) The company shall not make any change, alteration or deviation in the railway, or any portion thereof, until the provisions of the last preceding section are fully complied with. R.S.O. 1914, c. 185, s. 80.

ACQUISITION OF LAND.

*Quantity allowed without consent of owners.*Extent of
land which
may be
takenfor right
of way.

80. The land which may be taken without the consent of the owner shall not exceed

(a) for the right of way one hundred feet in breadth, except in places where the rail level is or is proposed to be more than five feet above or below the surface of the adjacent land, when such additional width may be taken as shall suffice to accommodate the slope and side ditches;

for sta-
tions, etc.

(b) for stations, depots and yards, with the freight sheds, warehouses, wharfs, elevators and other structures for the accommodation of traffic incidental thereto, one mile in length by five hundred feet in breadth, including the width of the right of way. R.S.O. 1914, c. 185, s. 81.

*Conveyances by fiduciary owners.*Who may
convey
lands.

81.—(1) All tenants in tail or for life, guardians, committees of lunatics, or curators, executors, administrators, trustees and all other persons whomsoever as well for and on behalf of themselves, their heirs and successors, as also for and on behalf of those whom they represent, whether infants, issue unborn, lunatics, idiots, or other persons seised, possessed of or interested in any land, may contract for, sell and convey to the company all or any part thereof.

Order of
judge may
be had.

(2) When such persons have no right in law to sell or convey the rights of property in the said land, they may obtain from a judge, after due notice to the persons interested, the right to sell the said land.

Purchase
money.

(3) The judge shall make such orders as are necessary to secure the investment of the purchase money in such a manner as he deems proper to secure the interests of the owner of the land.

Limitation
of powers
to convey.

(4) The powers, by subsections 1 and 2 conferred upon

(a) rectors in possession of glebe lands,

(b) ecclesiastical and other corporations,

(c) trustees of land for church or school purposes,

(d) executors appointed by wills under which they are not invested with any power over the real property of the testator, and

(e) administrators of persons dying intestate, but at their death seised of real property

shall only extend and be exercised with respect to any of such land actually required for the use and occupation of the company. R.S.O. 1914, c. 185, s. 82.

82.—(1) Any contract, agreement, sale, conveyance or assurance made under the authority of the next preceding section shall be valid and effectual in law to all intents and purposes whatsoever, and any conveyance so authorized shall vest in the company receiving the same, the fee simple in the land therein described, freed and discharged from all trusts, restrictions and limitations whatsoever. Effect of sale under preceding section.

(2) The person so conveying is hereby relieved from liability for what he does by virtue of or in pursuance of this Act. R.S.O. 1914, c. 185, s. 83. Exoneration.

83. The company shall not be responsible for the disposition of any purchase money for land taken by it for its purposes if paid to the owner of the land or into court for his benefit. R.S.O. 1914, c. 185, s. 84. Disposition of purchase money.

84.—(1) Any contract or agreement made by any person authorized by this Act to convey land either before the deposit of the plan, profile and book of reference, or before the setting out and ascertaining of the land required for the railway, shall, if duly registered in the proper registry office, be binding at the price agreed upon if the land is afterwards set out and ascertained within one year from the date of the contract or agreement. Effect of contracts made before deposit of map.

(2) Possession of the land may be taken, and the purchase money may be dealt with, as if it had been fixed by an award of arbitrators as hereinafter provided, and the contract or agreement shall be in the place of an award. R.S.O. 1914, c. 185, s. 85. Possession and purchase money.

85.—(1) If, in any case not hereinbefore provided for, any person interested in any land so set out and ascertained is not authorized by law to sell or alienate the same he may agree upon a fixed annual rent as an equivalent, and not upon a principal sum, to be paid therefor. Rental when parties cannot sell.

(2) If the amount of the rent is not fixed by agreement it shall be fixed and all proceedings shall be regulated in the manner herein prescribed. How fixed.

How charged in railway accounts.

(3) Such annual rent and every other annual rent agreed upon or ascertained and to be paid for the purchase of any land, or any part of the purchase money of any land which the vendor agrees to leave unpaid shall, upon the deed creating such charge or liability being duly registered in the registry office of the proper county, district or registration division, be chargeable as part of the working expenditure of the railway. R.S.O. 1914, c. 185, s. 86.

Purchase of Additional Land.

When more ample space required.

86.—(1) Should the company require, at any point on the railway, more ample space than it possesses or may take under section 80, for the convenient accommodation of the public, for the traffic on its railway, for protection against snowdrifts, for the diversion of a highway, for the substitution of one highway for another, or for the construction or taking of any works or measures ordered by the Board under any of the provisions of this Act or the special Act, or to secure the efficient construction, maintenance or operation of the railway, it may apply to the Board for authority to take the same for such purposes without the consent of the owner.

Procedure.

(2) The company shall give ten days' notice of such application to the owner or possessor of such land, and shall, upon such application, furnish to the Board copies of such notices with affidavits of the service thereof.

Material upon application.

(3) The company, upon such application, shall also furnish to the Board in duplicate

Plans, etc.,

(a) a plan, profile and book of reference of the portion of the railway affected, showing the additional land required, and certified as hereinbefore provided with respect to plans and profiles required to be deposited by the company with the Board;

Particulars to be specified.

(b) an application, in writing, for authority to take such land, signed and sworn to by the president, vice-president, general manager or engineer of the company, referring to the plan, profile and book of reference, specifying definitely and in detail the purposes for which each portion of the land is required, and the necessity for the same, and showing that no other land suitable for such purposes can be acquired at such place on reasonable terms and with less injury to private rights.

Authority from Board.

(4) After the time stated in such notices, and the hearing of such parties interested as may appear, the Board may, in its discretion and upon such terms and conditions as the

Board deems expedient, authorize in writing the taking for such purposes of the whole or any portion of the land applied for.

(5) Such authority shall be executed in duplicate, and one of such duplicates shall be filed, with the plan, profile, book of reference, application and notices, with the Board; and the other, with the duplicate plan, profile, book of reference and application, shall be delivered to the company. Deposit with Board.

(6) Such duplicate authority, plan, profile, book of reference and application, or copies thereof certified as such by the secretary, shall be deposited with the registrars of deeds of the counties or districts, respectively, in which such lands are situate. In registry offices.

(7) All the provisions of this Act applicable to the taking of lands without the consent of the owner for the right of way or main line of the railway shall apply to the land authorized under this section to be taken, except the provisions relating to the sanction by the Board of the plan, profile and book of reference of the railway, and the deposit thereof, when so sanctioned, with the Board and with registrars of deeds. R.S.O. 1914, c. 185, s. 87. Provisions of this Act which apply.

Negotiations with owner for compensation and damages.

87.—(1) After the expiration of ten days from the deposit of the plan, profile and book of reference in the office of the registrar of deeds, and after notice thereof in at least one newspaper, if there is any, published in each of the counties through which the railway is intended to pass, application may be made to the owners of lands or to persons empowered to convey land or interested in land which may be taken or which may suffer damage from the taking of materials or the exercise of any of the powers granted for the railway; and thereupon such agreements and contracts as seem expedient to both parties may be made with such persons touching the land, or the compensation to be paid for the same, or for the damages, or as to the mode in which such compensation shall be ascertained, as may seem expedient to both parties. After notice of deposit of map, etc., application to the owner of lands.

(2) In case of disagreement between the parties or any of them all questions which arise shall be settled as hereinafter provided. R.S.O. 1914, c. 185, s. 88. Settlement of questions.

Effect of depositing plan.

88.—(1) The deposit of a plan, profile and book of reference, and the notice of such deposit, shall be deemed a general notice to all persons of the land which will be required for the railway and works. Deposit, etc., to be general notice.

(2) The date of such deposit shall be the date with reference to which such compensation or damages shall be ascertained; but if the company does not actually acquire the Effect on question of damages.

land within one year from the date of such deposit then the date of the acquisition shall be the date with reference to which such compensation or damages shall be ascertained. R.S.O. 1914, c. 185, s. 89.

Notice to Owner.

Notice to
opposite
party.

89.—(1) A notice shall be served upon the owner which shall contain

- (a) a description of the land to be taken, or of the powers intended to be exercised with regard to any land therein described;
- (b) a declaration of readiness to pay a certain sum or rent, as the case may be, as compensation for such land or for such damages; and
- (c) the name of a person to be appointed as the arbitrator of the company if the offer is not accepted.

Certificate
of O.L.S.
to accom-
pany notice.

(2) The notice shall be accompanied by the certificate of an Ontario land surveyor not interested in the matter and not being the arbitrator named in the notice:—

- (a) that the land, if the notice relates to the taking of land, shown on the plan, is required for the railway, or is within the limit of deviation allowed by this Act;
- (b) that he knows the land, or the amount of damage likely to arise from the exercise of the powers; and
- (c) that the sum so offered is, in his opinion, a fair compensation for the land, and for the damages.

If the party
is absent
or unknown.

(3) If the owner is absent from the county or district in which the land lies, or is unknown, then upon application to a judge of the county or district court of the county or district in which the land lies, accompanied by such certificate, and by an affidavit of some officer of the company that such owner is so absent, or that, after diligent enquiry, the owner on whom the notice ought to be served cannot be ascertained, the judge shall order the notice, but without such certificate, to be published three times in the course of one month in some newspaper published in the county or district.

Provision
when the
county
judge is
interested.

(4) Where the judge is interested in the land, a judge of the Supreme Court may, on application of the company, exercise all the powers given to a judge of a county or district court by this section.

Appointment of Sole Arbitrator.

(5) If, within ten days after the service of the notice or within one month after the first publication thereof, the person served does not notify the company of his acceptance of the sum offered by it, or notify it of the name of a person whom he appoints as arbitrator, the judge shall, on the application of the company, six days' notice of which shall be given to the owner, appoint a person to be sole arbitrator for determining the compensation or damages to be paid.

Failure to accept the company's offer, or appoint arbitrator.

Appointment of Arbitrators, and Their Duties.

(6) The judge shall, at the request of either party on such application, appoint three arbitrators to determine such compensation or damages, one of whom may be named by each party.

Appointment by judge of three arbitrators.

(7) If the owner within the time mentioned in subsection 5, notifies the company of the name of his arbitrator, the two arbitrators shall jointly appoint a third, or if they cannot agree upon a third, the judge shall, on the application of the owner or of the company, previous notice of at least one clear day having been given to the other party, appoint a third arbitrator.

Appointment of arbitrator by opposite party.

Third arbitrator.

Notice of Claim by Owner after Entry.

(8) If land has been entered on and taken by the company, with or without the license of the person in possession thereof and without any agreement as to the compensation to be paid therefor, or if the land, though not taken, is injuriously affected by or through the construction of the railway, any owner or person interested in such land may commence proceedings to ascertain the compensation to which he is entitled in respect of the land so taken or injuriously affected, by giving to the company notice in writing of the name of a person to be appointed as his arbitrator, the description of the land taken or injuriously affected, and the amount of compensation or damages claimed, and thereupon like proceedings shall be taken to ascertain such compensation or damages as are prescribed where the company commences proceedings.

Proceedings to determine compensation.

(9) The arbitrators, besides awarding to the owner the amount which they find to be the value of the land, shall state what they find to be the total amount to be paid to compensate the owner, or for damages.

Stating amount found payable in award.

(10) The arbitrators, or any two of them, or the sole arbitrator, being sworn before a justice of the peace or a commissioner empowered to take affidavits, faithfully and

Duties of arbitrators.

impartially to perform the duties of their office, shall proceed to ascertain the compensation in such a way as they, or he, or a majority of them, deem best; and the majority of the arbitrators, at the first meeting after their appointment, or the sole arbitrator, shall fix a day on or before which the award shall be made, and may from time to time, with the consent of all parties, but not otherwise, extend such time; but no award shall be made or any official act done by the majority, except at a meeting held at a time and place of which the other arbitrator has had at least one clear day's notice, or to which some meeting at which the third arbitrator was present had been adjourned; and no notice to either of the parties shall be necessary, but each party shall be held sufficiently notified through the arbitrator appointed by him, or whose appointment he required.

Notes of
evidence.

(11).—(a) The arbitrators or the sole arbitrator shall take down in writing the evidence brought before them or him, unless either party requires that it be taken by a stenographer; in which case a stenographer shall be named by the arbitrators or arbitrator, unless the parties agree upon one.

Steno-
grapher.

(b) The stenographer shall be sworn before the arbitrators, or before any one of them, before entering upon his duties.

His
expenses.

(c) The expense of such stenographer, if not determined by agreement between the parties, shall be taxed by the court or a judge thereof, and shall, in any case, form part of the costs of the arbitration.

All papers
except
award to
be filed
in court.

(d) After making the award the arbitrators, or the sole arbitrator shall forthwith deliver or transmit by registered letter, at the request of either party in writing, the depositions, together with the exhibits referred to therein, and all papers connected with the reference except the award, to the Central Office at Osgoode Hall.

Death of
arbitrator
or failure
to act.

(12).—(a) If an arbitrator dies before the award is made, or is disqualified, or refuses or fails to act within a reasonable time, another arbitrator may be appointed in his stead.

(b) If such arbitrator was appointed by one of the parties, or by the judge on his nomination, he shall have the right to appoint the arbitrator in his stead.

(c) If such arbitrator was appointed by the judge, the arbitrator in his stead may be appointed by the judge, on the application of either party, on six days' notice to the other.

(d) If such arbitrator was appointed by the two arbitrators appointed by the parties, the arbitrator in his stead may be appointed by the remaining arbitrators.

(e) In a case not provided for by the foregoing provisions, the arbitrator may be appointed by the judge, on the application of either party, on six days' notice to the other.

(f) It shall not be necessary in any such case that the proceedings shall be recommenced or repeated.

(13).—(a) Where the notice given improperly describes the lands or materials intended to be taken, or where the company decides not to take the lands or materials mentioned in the notice, it may abandon the notice and all proceedings thereunder, but shall be liable to the person notified for all damages or costs incurred by him in consequence of such notice and abandonment, which costs shall be taxed in the same manner as costs after an award.

Abandonment of proceedings.

(b) The company may, notwithstanding the abandonment of any former notice, give to the same or any other person notice for other lands or materials, or for lands or materials otherwise described.

New notice after abandonment.

(14) No award shall be invalidated by reason of any want of form or other technical objection, if the requirements of this Act have been substantially complied with, and if the award states clearly the sum awarded, and the land or other property, right or privilege for which such sum is to be the compensation; nor shall it be necessary that the person to whom the sum is to be paid be named in the award.

Awards not voided for want of form.

Appeals.

(15) Any party to the arbitration, may within one month after receiving a written notice from the arbitrators of the making of the award, appeal therefrom upon any question of law or fact to the Supreme Court, and upon the hearing of the appeal the court shall decide any question of fact upon the evidence taken before the arbitrators as in a case of original jurisdiction.

Appeal to Supreme Court from award on question of law or fact.

(16) Upon such appeal the practice and proceedings shall be as nearly as may be the same as upon an appeal from an award under *The Arbitration Act*, subject to any Rules of Court made under that Act or under *The Judicature Act*.

Procedure on appeal. Rev. Stat. cc. 97, 88.

(17) The right of appeal hereby given shall not affect the existing law or practice as to setting aside such awards.

Existing practice not affected.

(18) Where the company has taken possession of the land prior to the making of the award it shall, within seven days after receiving a written notice from the arbitrators of the making of the award, take up the same and deliver to the owner a copy thereof.

Company taking possession to take up award on notice.

Company's Right to Possession.

(19) Upon payment or legal tender of the compensation or annual rent so awarded or agreed upon to the person entitled to receive the same, or upon the payment into court of the amount of such compensation in the manner herein-after mentioned, the award or agreement shall vest in the

Possession may be taken on payment or tender, etc., of sum awarded.

company the power forthwith to take possession of the land, or to exercise the right, or to do the thing for which such compensation or annual rent has been awarded or agreed upon.

Warrant of possession.

(20) If any resistance or forcible opposition is made to the exercise by the company of any such power, the judge of the county or district court of the county or district in which the land lies, or a judge of the Supreme Court shall, on proof to his satisfaction of such award or agreement, issue his warrant to the sheriff of the county or district to put the company in possession and to put down such resistance or opposition.

Powers of sheriff.

(21) The sheriff shall, in the execution of such warrant, take with him sufficient assistance for such purpose, and shall put down such resistance or opposition and put the company into possession.

When warrant of possession may issue before award.

(22) The warrant shall also be granted without the award or agreement, on affidavit to the satisfaction of the judge that the immediate possession of the land or of the power to do the thing mentioned in the notice, is necessary to carry on some part of the railway with which the company is ready forthwith to proceed.

Procedure upon application for such warrant.

(23) The judge shall not grant any warrant under the next preceding subsection, unless

Notice.

(a) ten days' previous notice of the time and place when and where the application for such warrant is to be made has been served upon the owner of the land or the person empowered to convey the land or interested in the land sought to be taken or which may suffer damage from the taking of materials sought to be taken, or the exercise of the powers sought to be exercised, or the doing of the thing sought to be done, by the company, and

Deposit of compensation.

(b) the company gives security to his satisfaction by payment into court of a sum in his estimation sufficient to cover the probable compensation and costs of the arbitration, and not less than double the amount mentioned in the notice served under subsection 1 of this section.

Costs of application.

(24) The costs of any such application shall be in the discretion of the judge, and no part of such deposit or of any interest thereon shall be repaid, or paid to such company, or paid to such owner or person, without an order from the judge, which he may make in accordance with the terms of the award.

(25) The compensation for any land which may be taken without the consent of the owner shall stand in the stead of such land; and any claim to or incumbrance upon the land, or any portion thereof, shall, as against the company, be converted into a claim to the compensation, or to a like proportion thereof, and the company shall be responsible accordingly whenever it has paid the compensation, or any part thereof, to a person not entitled to receive the same, saving always its recourse against such person.

When compensation to stand in the place of the land.

(26) When

- (a) the company has reason to fear any claim, mortgage or incumbrance; or
- (b) any person to whom the compensation or annual rent, or any part thereof, is payable, refuses to execute the proper conveyance; or
- (c) the person entitled to claim the compensation or the annual rent cannot be found, or is unknown to the company; or
- (d) for any other reason, the company deems it advisable,

Payment of compensation into court in some cases.

the company may, by leave of a judge of the Supreme Court, pay such compensation or annual rent into court, with the interest thereon for six months, and with such further sum if such judge so directs, as may, in his opinion, be sufficient to cover the expenses of advertising and the costs that may be incurred in consequence of such payment into court, and may deliver to the accountant of the Supreme Court a copy of the conveyance, or of the award or agreement if there is no conveyance.

(27) Such conveyance, award or agreement shall thereafter be deemed to be the title of the company to the land therein mentioned.

Title.

(28) A notice of such payment and delivery, in such form and for such time as a judge of the Supreme Court appoints, shall be inserted in a newspaper published in the county or district in which the land is situate.

Notice and publication.

(29) Such notice shall state that the conveyance, agreement or award constituting the title of the company is obtained under the authority of this Act, and shall call upon all persons claiming an interest in or entitled to the land, or to any part thereof, to file their claims to the compensation or any part thereof.

Contents of notice.

(30) All such claims filed shall be received and adjudicated upon by the court, and the adjudication shall bar all claims to the land, or any part thereof, including dower as well as all mortgages and incumbrances upon the same.

Adjudication on claims.

Adjustment
of compen-
sation

(31) The court shall make such order for the distribution, payment or investment of the compensation, and for the securing of the rights of all persons interested as may be proper.

By whom
cost to be
paid.

(32) The costs of the proceedings in whole or in part, including the proper allowances to witnesses, shall be paid by the company or by any other person as the court may order.

When rebate
of interest to
be ordered.

(33) If the order for distribution, payment or investment is obtained within less than six months from the payment of the compensation, the court shall direct a proportionate part of the interest to be returned to the company;

Interest
as compen-
sation for
delay, etc.

(34) If from any error, fault or neglect of the company an order is not obtained until after the six months, the court shall order the company to pay into court, as part of the compensation, the interest for such further period as the court deems just. R.S.O. 1914, c. 185, s. 90.

Compensation to Owners of Lands Adjoining Highways.

Compensa-
tion to
owners of
lands
adjoining
highway.

90.—(1) Where a railway constructs its tracks along one side of a highway or operates over a highway or railway or street railway crossing by means of a bridge, or underneath a highway or railway or street railway crossing by means of a sub-way or tunnel, and, in the construction of the approaches to such bridge or tunnel, raises or depresses part of a highway the owner of any land adjoining the portion of the highway upon the side thereof upon which the tracks are so constructed or upon or along which the said bridge or sub-way or tunnel or approaches thereto are constructed shall, if by reason of such construction his land or the business carried on upon such land is thereby injured or in any way depreciated in value, be entitled to receive compensation therefor from the company.

Procedure.

(2) The proceedings to obtain such compensation and to determine the amount thereof shall, so far as applicable, be the same as that provided in this Act in the sections respecting the taking of land without the consent of the owner.

Compensa-
tion where
grade of
highway
unaltered.

(3) Compensation for injury to, or depreciation of the value of any such business or land may be awarded by the arbitrators, if, in their judgment, any such injury or depreciation is caused by the existence of the railway notwithstanding that the grade of the highway may not have been changed or altered.

Only one
award.

(4) Not more than one award of damages shall be made under this section in respect of the same land or business.

Saving.

(5) This section shall not apply to such portions of any railway as are constructed on or before the 1st day of June, 1906, or which may be constructed under agreements existing at that date. R.S.O. 1914, c. 185, s. 91.

*Obtaining Stone, Gravel or Other Material.***91.**—(1) Whenever

(a) any stone, gravel, earth, sand, water or other material is required for the construction, maintenance or operation of the railway, or any part thereof; ^{Obtaining materials for construction or operation.}

(b) such materials so required are situate, or have been brought to a place, at a distance from the line of railway and the company desires to lay down the necessary tracks, spurs or branch lines, water pipes or conduits, over or through any lands intervening between the railway and the land on which such materials are situate or to which they have been brought, ^{Transport. Tracks or conduits.}

the company may, if it cannot agree with the owner of the land for the purchase thereof, cause an Ontario land surveyor to make a plan and description of the property or right of way, and shall serve upon each of the owners or occupiers of the land affected a copy of such plan and description, or of so much thereof as relates to the land owned or occupied by them respectively, duly certified by such surveyor or engineer. ^{Plan and description}

(2) All the provisions of this Act shall, in so far as applicable, apply, and the powers thereby granted may be used and exercised to obtain the materials so required, or the right of way to the same, irrespective of the distance thereof; but the company shall not be required to submit any such plan for the sanction of the Board. ^{Provisions of this Act which apply.}

(3) The company may, at its discretion, acquire the land from which such materials are taken, or upon which the right of way thereto is located, for a term of years or permanently. ^{Title may be acquired.}

(4) The notice of arbitration, if arbitration is resorted to, shall state the extent of the privileges and title required. ^{Arbitration.}

(5) The tracks, spurs or branch lines constructed or laid by the company under this section shall not be used for any purpose other than in this section mentioned, except by leave of the Board and subject to such terms and conditions as the Board may impose. R.S.O. 1914, c. 185, s. 92. ^{Tracks not to be used for other purposes.}

Branch Lines and Switches and Sidings to Industries.

92.—(1) The company may, for the purpose of its undertaking, construct, maintain and operate branch lines, not exceeding in any one case six miles in length, from the main line of the railway or from any branch thereof. ^{Power to construct.}

(2) Before commencing to construct any such branch line the company shall ^{Procedure.}

Plans, etc.

(a) make a plan, profile and book of reference, showing the proposed location of the branch line, with the particulars hereinbefore required as to plans, profiles and books of reference of the main line, and deposit the same, or such parts thereof as relate to each county or district through which the branch line is to pass, in the offices of the registrars of deeds for such counties or districts;

Notice of application to Board.

(b) upon such deposit, give four weeks' public notice of its intention to apply to the Board under this section, in some newspaper published in each county or district through which the branch line is to pass, or if there is no newspaper published in such county or district, then for the same period in the *Ontario Gazette*; but the Board may dispense with or shorten the time of such notice in any case in which it deems proper to do so; and

Material to be submitted.

(c) after the expiration of the notice submit to the Board, upon such application, a duplicate of the plan, profile and book of reference so deposited.

Board may authorize branch line.

(3) The Board, if satisfied that the branch line is necessary in the public interest or for the purpose of giving increased facilities to business, and if satisfied with the location of such branch line and the grades and curves as shown on such plan, profile and book of reference, may, in writing, authorize the construction of the branch line in accordance with such plan, profile and book of reference or subject to such changes in location, grades or curves as the Board may direct.

Time for construction.

(4) Such authority shall limit the time, not exceeding two years, within which the company shall construct and complete such branch line.

Deposit of material with Board.

(5) There shall be deposited with the Board such authority and the duplicate of such plan, profile and book of reference, together with such papers and plans as are necessary to show and explain any changes directed by the Board, under the provisions of this section.

And in registry offices.

(6) The company shall deposit in the registry offices of the counties or districts through which the branch line is to pass copies, certified as such by the secretary, of the authority, and of the papers and plans showing the changes directed by the Board.

No extension allowed.

(7) No branch line shall be

(a) extended under the foregoing provisions for the construction of branch lines; or

(b) constructed so as to form, in effect, an extension of the railway beyond the termini mentioned in the special Act.

(8) Upon compliance with the requirements of the next seven preceding subsections all the other provisions of this Act, except those relating to the sanction by the Board of the plan, profile and book of reference of the railway and the deposit thereof with the Board and in the offices of the registrars of deeds for the counties or districts through which the railway is to pass, shall, in so far as applicable, apply to the branch lines so authorized and to the land to be taken for them. R.S.O. 1914, c. 185, s. 93.

93.—(1) Where any industry or business is established or intended to be established within six miles of the railway, and the owner of such industry or business, or the person intending to establish the same, is desirous of obtaining railway facilities in connection therewith, but cannot agree with the company as to the construction and operation of a spur or branch line from the railway thereto, the Board may, on the application of such owner or person, and upon being satisfied of the necessity for such spur or branch line in the interests of trade, order the company to construct, maintain and operate such spur or branch line, and may direct such owner or person to deposit in a chartered bank such sum as is by the Board deemed sufficient or necessary to defray all expenses of constructing and completing the spur or branch line in good working order, including the cost of the right of way, incidental expenses and damages.

(2) The amount so deposited shall, from time to time, be paid to the company, upon the order of the Board, as the work progresses.

(3) The aggregate amount so paid by the applicant in the construction and completion of the spur or branch line shall be repaid or refunded to him by the company by way of rebate, to be determined and fixed by the Board, out of or in proportion to the tolls charged by the company in respect of the carriage of traffic for the applicant over the spur or branch line.

(4) Until so repaid or refunded the applicant shall have a special lien for such amount upon the spur or branch line, to be reimbursed by such rebate.

(5) Upon repayment by the company to such applicant of all payments made by him upon such construction and completion, the spur or branch line, right of way, and equipment shall become the absolute property of the company free from any such lien.

(6) The operation and maintenance of the said spur or branch line by the company shall be subject to and in accordance with such order as the Board may make with respect thereto having due regard to the requirements of the traffic thereon, and to the safety of the public and of the employees of the company.

Provisions applicable.

Spur or branch line required by owner of any industry.

Owner to deposit cost.

Payment to the company.

Repayment to owner by rebate on tolls.

Lien to owner meantime.

Discharge of lien.

Operation of branch to be regulated by Board.

Construction
on applica-
tion of
municipal
corporation.

(7) A municipal corporation may apply for the construction and maintenance of a spur or branch line for providing facilities in connection with a railway for the purpose of any industry, business or market established within six miles of the railway, and the provisions of the foregoing subsections shall apply as if the corporation were the person by whom the industry or business was established.

Cost in
such case.

(8) Where the application is made by a municipal corporation, the Board may require the corporation to pay to the company the cost of construction and completion of the spur or branch line, or may require part of it to be paid by the corporation and part of it to be repaid or refunded by way of rebate so provided by subsection 3.

Provisions
applicable.

(9) All the provisions of this Act respecting the construction of spur or branch lines shall apply to any spur or branch line constructed under this section. R.S.O. 1914, c. 185, s. 94.

Purchase of more land than necessary.

When com-
pany may
purchase.

94.—(1) Whenever the company can purchase a larger quantity of land from any particular owner at a more reasonable price, on the average, or on more advantageous terms than it could obtain the portion thereof which it may take from him without his consent it may purchase such larger quantity.

Sale of
surplus land.

(2) The company may sell and dispose of any part of the land so purchased which may be unnecessary for the undertaking. R.S.O. 1914, c. 185, s. 95.

Snow Fences, Etc.

Erection of
snow fences.

95.—(1) Every company may, on and after the 1st day of November in each year, enter into and upon any lands of His Majesty, or of any person, lying along the route or line of the railway and erect and maintain snow fences thereon, subject to the payment of such land damages, if any, actually suffered and thereafter established, in the manner provided by law with respect to such railway.

Compensa-
tion.

Removal.

(2) Every snow fence so erected shall be removed on or before the 1st day of April then next following. R.S.O. 1914, c. 185, s. 96.

Use of Adjacent Lands during Construction.

Use of
adjacent
lands.

96.—(1) The company, either for the purpose of constructing or repairing its railway, or for the purpose of carrying out the requirements of the Board, or in the exercise of the powers conferred upon it by the Board, may enter upon any land which is not more than six hundred feet distant from

the centre of the located line of the railway, and may occupy such land as long as is necessary for such purposes; and all the provisions of law at any time applicable to the taking of land by the company, and its valuation, and the compensation therefor, shall apply to the case of any land so required.

(2) Before entering upon any land for such purposes the company shall, if the consent of the owner is not obtained, pay into the Supreme Court If owner does not consent.

(a) such sum as is, after two clear day's notice to the owner of the land, or to the person empowered to convey the same, or interested therein, fixed by a judge of such court; and, Sum to be deposited.

(b) interest for six months upon the sum so fixed. Interest.

(3) Such deposit shall be retained to answer any compensation which may be awarded the person entitled thereto, and may, upon order of a judge of such court, be paid out to such person in satisfaction *pro tanto* of such award, and the surplus, if any thereafter remaining, shall, by order of the judge, be repaid to the company. As security for compensation.

(4) Any deficiency in such deposit to satisfy such award shall be forthwith paid by the company to the person entitled to compensation under such award. R.S.O. 1914, c. 185, s. 97. Deficiency to be paid.

CONSTRUCTION AND EQUIPMENT.

Gauge.

97. The tracks of every railway, the construction of which is hereafter commenced, shall be of the standard gauge of four feet eight and one-half inches, unless the Board upon the application of the company otherwise orders. R.S.O. 1914, c. 185, s. 98. Gauge.

Equipment and Appliances for Trains.

98.—(1) Every company shall provide and cause to be used on all trains modern and efficient apparatus, appliances and means Modern and efficient.

(a) to provide immediate communication between the conductor, while in any car of any passenger train, and the engine driver or motorman; Communication.

(b) to check at will the speed of the train, and bring the same safely to a standstill, as quickly as possible, and, except under circumstances of sudden danger or emergency, without causing undue discomfort to passengers, if any, on the train; and Brakes.

Couplers.

(c) to securely couple and connect the cars composing the train, and to attach the engine to such train, with couplers which couple automatically by impact and which can be uncoupled without the necessity of men going in between the ends of the cars.

Drive wheel
brake.

(2) Such apparatus, appliances and means for the checking of speed or the stopping of any train shall include a power drive wheel brake and appliances for operating the train brake system upon the locomotive.

Power or
train brakes.

(3) There shall also be such a number of cars in every train equipped with power or train brakes that the engineer or motorman on the locomotive drawing such train can control its speed, or bring the train to a stop in the quickest and best manner possible, without requiring brakemen to use the common hand brake for that purpose.

Continuous,
instantaneous
action.

(4) Upon all trains carrying passengers such system of brakes shall be continuous, instantaneous in action, and capable of being applied at will by the engine driver, motorman or any brakeman, and the brakes must be self-applying in the event of any failure in the continuity of their action.

Box freight
cars.

(5) All box freight cars of the company shall, for the security of railway employees, be equipped with

Outside
ladders.

(a) outside ladders, on two of the diagonally opposite ends and sides of each car, projecting below the frame of the car, with one step or rung of each ladder below the frame, the ladders being placed close to the ends and sides to which they are attached; and

Hand grips.

(b) hand grips placed anglewise over the ladders of each box car and so arranged as to assist persons in climbing on the roof by means of the ladders:

Other im-
provements.

and if there is at any time any other improved side attachment which, in the opinion of the Board, is better calculated to promote the safety of the train hands the Board may require any of such cars, not already fitted with the side attachments by this section required, to be fitted with such improved attachment.

Running
boards.

(6) The running-board on the roof of each box freight car of the company shall, at all times, be of sufficient thickness and strength, and not less than thirty inches in width, and shall, with proper and safe supports, extend the whole length of the car and beyond each end thereof to a point not more than two inches less than that to which the dead-wood or bumpers at each end of such car likewise extend.

(7) Every company shall adopt and use upon all its rolling stock such height of draw-bars as the Board determines, in accordance with any standard from time to time adopted by competent railway authorities.

Height of
draw-bars.

(8) The Board may upon good cause shown, by general regulation, or in any particular case, from time to time grant delay for complying with the provisions of this section.

Delay may
be allowed
for com-
pliance.

(9) The Board may, subject to the requirements of the preceding provisions of this section, upon application, order that any apparatus or appliance specified in such order shall, when used upon the train in the manner and under circumstances in such order specified, be deemed sufficient compliance with such provisions, but the Board shall not by such order allow any exception to or modification of the requirements of this section.

Board may
determine
what equip-
ment suffi-
cient.

(10) The oil cups or other appliances used for oiling the valves of every locomotive in use upon any railway shall be such that no employee shall be required to go outside the cab of the locomotive, while the same is in motion, for the purpose of oiling such valves.

Oiling.

(11) Every passenger, baggage, mail and express car, which is owned or regularly used on any railway in Ontario, in which heating apparatus is placed, shall be provided with such safeguards against fire as the Board shall in writing from time to time approve.

Safeguards
against fire
in cars.

(12) Every company which fails to comply with any of the provisions of this section shall forfeit to His Majesty a sum not exceeding \$200 for every day during which such default continues, and shall as well be liable to pay to all such persons as are injured by reason of the non-compliance with these provisions, or to their representatives, such damages as they are legally entitled to notwithstanding any agreement to the contrary. R.S.O. 1914, c. 185, s. 99.

Penalty for
non-com-
pliance.

Damages.

Agreements
to contrary
invalid.

99. Every locomotive, engine and electric locomotive shall be furnished with a bell of at least thirty pounds weight or with a steam or air whistle. R.S.O. 1914, c. 185, s. 100.

Locomotives
to have
bells or
whistles.

100. Every car which contains a motor or which runs at the head of a train shall be furnished with a gong, to be approved by regulation of the Board, or with an air whistle. R.S.O. 1914, c. 185, s. 101.

Gongs and
whistles.

101.—(1) Every car in use for the transportation of passengers in November, December, January, February, March and April in each year, which while in motion requires the constant care or service of a motorman upon the platforms of the car or upon one of them, shall have its platforms so enclosed as to protect the motorman from exposure to wind and weather in such manner as the Board shall approve.

Protection
of conduc-
tors and
motormen.

Where no
rear vesti-
bules.

(2) Every company operating its cars without rear end vestibules shall allow the conductors employed on such cars to stand inside the cars during such period so far as is consistent with the proper performance of their duties.

Compartment
for
motorman.

(3) Every motor car built after the passing of this Act, designed for carrying passengers upon a railway operated by electricity, shall be so constructed that the motorman having the control of the motive power shall be stationed in a compartment into which no person shall be admitted save the officers or employees of the company on duty; and no person other than such officers or employees shall be permitted to occupy any portion of such compartment or vestibule.

Penalty.

(4) Any company offending against the provisions of this section shall incur a penalty of \$100 for each offence and any person offending against the provisions of this section shall incur a penalty of not less than \$2 or more than \$50, recoverable under *The Summary Convictions Act*.

Rev. Stat.
c. 121.

Application.

(5) This section shall apply only to railways operated by electricity, street railways and incline railways. R.S.O. 1914, c. 185, s. 102.

Power to
requirements
modify re-
of section 101.

102. The Board may, by order applicable either generally or in one or more particular cases, alter or modify any of the requirements of section 101. R.S.O. 1914, c. 185, s. 103.

Powers of Board as to Equipment and Service.

Board may
make regula-
tions re-
specting—
Speed of
trains.

103.—(1) The Board may make orders and regulations

(a) limiting the rate of speed at which railway trains and locomotives may be run in any city, town or village, or in any class of cities, towns or villages; and prescribing, if it thinks fit, certain maximum rates of speed within certain described portions of any city, town or village, and different rates of speed in other portions thereof;

Use of
steam
whistle.

(b) with respect to the use of the steam whistle within any city, town or village or any portion thereof;

Passing
from car
to car.

(c) with respect to the method and means of passing from one car to another, either inside or overhead, and for the safety of employees while passing from one car to another;

Coupling.

(d) for the coupling of cars;

Shelter for
employees.

(e) requiring proper shelter to be provided for all employees when on duty;

Devices to
avoid fires.

(f) with respect to the use on any engine of nettings, screens, grates and other devices, and the use on any engine or car of any appliances and precau-

tions, and generally in connection with the railway respecting the construction, use and maintenance of any fire-guard or works which may be deemed by the Board necessary and most suitable to prevent, as far as possible, fires from being started or occurring upon, along or near the right of way of the railway;

- (g) requiring the company to establish and maintain ^{Fire-rangers.} an efficient and competent staff of fire-rangers, equipped with such appliances for fighting or preventing fires from spreading as the Board may deem proper, and to provide such rangers with proper and suitable equipment to enable them to move from place to place along the line of railway with all due speed;
 - (h) requiring the company to maintain an efficient ^{Patrol of railway.} patrol of the line of railway and other lands in the vicinity thereof to which fires may spread, and generally to define the duties of the company and such fire-rangers in respect thereof;
 - (i) requiring the company to make returns of the names ^{Returns.} of fire-rangers in its employ in the performance of the above duties, and of the places or areas in which they are from time to time engaged;
 - (j) with respect to the rolling stock, apparatus, cattle- ^{For protection generally.} guards, fenders, brakes, sanders, and vestibules, steps, seats, heating, lighting, open or closed cars, appliances, signals, methods, devices, structures and works to be used upon the railway, so as to provide means for the due protection of property, the employees of the company, and the public;
 - (k) with respect to any matter, act or thing which, by ^{Other matters.} this Act or the special Act is sanctioned, required to be done, or prohibited;
 - (l) generally for carrying this Act into effect. Generally
- (2) For the purpose of fighting and extinguishing fires, ^{Powers of rangers.} the fire-rangers may follow the fires which spread from the railway to, over and upon the lands to which they may spread.
- (3) Any such orders or regulations may be made to apply ^{Application of orders.} to any particular locality, to any railway or section, or portion thereof, and the Board may exempt any railway or section or portion thereof, from the operation of any such order or regulation, for such time or during such period as the Board deems expedient.
- (4) The Board may, by regulation, provide penalties, when ^{Penalties.} not already provided in this Act, to which every company, person or municipal corporation offending against any regu-

Rev. Stat.
c. 121.

lation made under this section shall be liable, but no such penalty shall exceed \$100 for each offence, and every such penalty shall be recoverable under *The Summary Convictions Act*, or by action at the suit of the Attorney-General as the Board may, by regulation, determine.

Saving.

(5) The imposition of any such penalty shall not lessen or affect any other liability which any company, person or municipal corporation may have incurred.

Application
of regula-
tions.

(6) All orders or regulations under this section may be made to apply to any railways, whether operated by steam, electricity or other motive power, but no such order or regulation shall increase or extend, lessen or impair any obligation or duty resting upon, or any privilege or franchise enjoyed by the company under the special Act or under any agreement. R.S.O. 1914, c. 185, s. 104.

Jurisdiction
of Board
over railway.

104.—(1) Whenever the Board is of opinion after hearing had upon its own motion or upon complaint, that the regulations, practices, equipment, appliances or service of any railway company, street railway company, or incline railway company in respect to the transportation of persons, freight or property are unjust, unreasonable, unsafe, improper or inadequate, it shall determine the just, reasonable, safe, proper and adequate regulations, practices, equipment, appliances or service thereafter to be in force, to be observed and to be used in such transportation of persons, freight, and property, and fix and prescribe the same by order to be served upon the company to be bound thereby; and it shall be the duty of the company to observe and obey every requirement of every such order and to do everything necessary or proper in order to secure absolute compliance with and observance of every such order by its officers, agents and employees.

As to regu-
lations,
equipment
and service.

Tracks
and motive
power.

(2) Whenever, in the opinion of the Board, repairs or improvements to or changes in any tracks, road-beds, switches, terminals or terminal facilities, motive power or any other property or device used by any railway company or street railway company, or incline railway company, in or in connection with the transportation of passengers, freight or property, ought reasonably to be made thereto in order to promote the security or convenience of the public or of the employees of the company or to secure adequate service or facilities for the transportation of passengers, freight or property, the Board, upon a hearing had either upon its own motion or after complaint, shall make and serve an order directing such repairs, improvements, changes or additions to be made within a reasonable time and in a manner to be specified therein, and every company shall make all repairs, improvements, changes and additions required of it by any such order within the time and in the manner specified in the order.

(3) Whenever in the opinion of the Board, a street railway company or incline railway company

Jurisdiction
over street
railways or
incline
railways.

- (a) does not run cars enough or possess or operate motive power enough reasonably to accommodate the passengers transported or offered for transportation to it;
- (b) does not run its cars with sufficient frequency or at a reasonably proper time;
- (c) does not run any car upon a reasonable time schedule for the run;
- (d) does not provide reasonable routes and services for the accommodation of the public;
- (e) does not provide for stopping its cars to take on and discharge its passengers at convenient points or at a sufficient number of points;
- (f) does not sufficiently or properly heat and light any of its cars or keep the same clean; or
- (g) operates any car which is not in proper repair and condition,

the Board may, after a hearing had either on its own motion or upon complaint, make an order directing the company to increase the number of its cars or its motive power, to change the time for starting any car, to change the time schedule for the run of any car, to run cars and provide a sufficient service upon any route that the Board may deem necessary for the accommodation of the public, to sufficiently light and heat its cars and keep them clean, to stop its cars to take on and discharge passengers at such points as the Board may deem proper, and may make any other order which the Board may deem necessary to accommodate and transport the passengers transported or offered for transportation, and the company shall be bound to obey every such order according to the exigency thereof.

Improvement
of
service.

(4) The powers conferred by the three next preceding subsections upon the Board shall be in addition to the powers conferred upon it elsewhere in this Act.

Powers
additional
to present
powers.

(5) The Board shall have the like power and authority for the enforcement of any order made by it under the provisions of the said three subsections as it possesses for the enforcement of its orders under the other provisions of this Act, and especially the power and authority conferred by section 25 of *The Railway and Municipal Board Act*, and section 261 of this Act.

Enforcement
of
orders.

Rev. Stat.
c. 225.

(6) The provisions of this section shall apply notwithstanding any agreement between the company and a municipal corporation or the provisions of any general or special Act relating to the agreement or to the company.

Application
of section.

Power to
require
construction,
maintenance
and
operation of
additional
lines.

(7) The powers conferred by this Act in the case of street railways wholly or partly in cities having a population of one hundred thousand or over shall include, but in the case of other street railways shall not include, the power to require the company owning or operating the street railway to construct, maintain and operate additional lines and extensions of existing lines, in, along and upon any street or highway or part of a street or highway upon which the company has authority to construct, maintain and operate its railway.

Limitation
of Board's
power.

(8) The Board shall not have power or authority to require or to permit a railway company, street railway company, or incline railway company, without the consent of the corporation of the municipality, to construct or lay down within the municipality more tracks or lines than, under its agreement with the corporation or the by-law of the council of the corporation of the municipality by which authority to construct the railway upon any such street or highway or part of a street or highway was conferred, it has authority to construct or lay down, but the agreement or by-law shall govern as to the number and location of the tracks and the streets or highways upon which the railway may be constructed.

Application
of agree-
ment.

(9) All tracks, switches, additional lines and extensions of existing lines which are, have been or shall be hereafter constructed and operated by a street railway company or incline railway company, in pursuance of an order of the Board, shall nevertheless be deemed to have been constructed under the authority, and shall be subject to all the provisions of the agreement between the company and the corporation of the municipality, or the by-law of the council thereof, by which authority to construct the railways was conferred upon the company. R.S.O. 1914, c. 185, s. 105.

Stopping
places.

105. Railways operated by electricity shall stop at such places, in addition to those fixed by the by-laws or regulations of the company, as the Board may from time to time, by resolution, direct and order. R.S.O. 1914, c. 185, s. 106.

Open cars.

106.—(1) Open or summer cars, for use upon a railway operated by electricity or upon a street railway, shall be so arranged or constructed that the seats for passengers will face the front of the car when in motion, and an aisle sufficiently wide to allow the passage of the conductor shall be provided in every such car, and no open or summer cars shall be used unless so arranged.

Side steps.

(2) The side steps on such cars shall be so constructed, if in the opinion of the Board it is practicable, that passengers will be prevented from standing upon the same while the car is in motion.

(3) The Board may relieve a company from the obligation imposed by subsection 1 as to any route upon which the space between the tracks, commonly called the devil strip, is not sufficiently wide to permit cars so arranged or constructed to be used. Exception.

(4) In all cases of dispute between a railway or street railway company and a municipal corporation or any person making complaint to the Board as to sufficiency of width, practicability of construction of cars or as to any other matter or thing mentioned in this section, the order of the Board shall be final and shall not be subject to appeal, and any order made by the Board as to any such matter shall be carried out and fulfilled by the company and the municipal corporation or either or both of them according to its terms. Disputes to be settled by Board. Finality.
R.S.O. 1914, c. 185, s. 107 (1-4).

107.—(1) No passenger shall stand or be permitted to stand upon the side steps of any car for a greater length of time than is necessary to enable him to enter or leave the same. Passengers not to stand on side steps.

(2) For every contravention of subsection 1, the person offending shall incur a penalty of not less than \$2 or more than \$10, recoverable under *The Summary Convictions Act*. Penalty. Rev. Stat. c. 121.
R.S.O. 1914, c. 185, s. 107 (5, 6).

THE ROAD BED AND ADJACENT LANDS.

Frogs, Packing, etc.

108.—(1) The spaces behind and in front of every rail-way frog or crossing, and between the fixed rails of every switch, where such spaces are less than four inches in width, shall be filled with packing up to the under side of the head of the rail. In what spaces.

(2) The spaces between any wing rail and any railway frog, and between any guard rail and the track rail alongside of it, shall be filled with packing at their splayed ends, so that the whole splay shall be so filled where the width of the space between the rails is less than four inches. Idem.

(3) Such packing shall not reach higher than to the under side of the head of the rail. Height of.

(4) Such packing shall consist of wood or metal, or some equally substantial and solid material, of not less than two inches in thickness, and, where by this section any space is required to be filled in on any railway, shall extend to within one and a half inch of the crown of the rails in use, shall be neatly fitted so as to come against the web of such rails, and shall be well and solidly fastened to the ties on which such rails are laid. Of what to consist.

Board may
regulate.

(5) The Board may, notwithstanding the requirements of this section, allow the filling and packing therein mentioned to be left out from the month of December to the month of April in each year, both months included, or between any such dates as the Board, by regulation or in any particular case, determines. R.S.O. 1914, c. 185, s. 108.

Drainage.

Ditches and
drains.

109.—(1) The company shall, in constructing the railway, make and maintain suitable ditches and drains along each side of and across and under the railway, to connect with ditches, drains, drainage works and watercourses upon the land through which the railway runs, so as to afford sufficient outlet to drain and carry off the water, and so that the then natural, artificial, or existing drainage of the land shall not be obstructed or impeded by the railway.

(2) Whenever

If drainage
insufficient.

(a) any land is injuriously affected by reason of the drainage upon, along, across, or under the railway being insufficient to drain and carry off the water from such land; or

Or municipi-
pality
desires.

(b) any municipal corporation or landowner desires to obtain means of drainage, or the right to lay water pipes or other pipes, temporarily or permanently, through, along, upon, across, or under the railway or any works or land of the company

Board may
order.

the Board may, upon the application or complaint of the municipal corporation or landowner, order the company to construct such drainage or lay such pipes, and may require the applicant to submit to the Board a plan and profile of the portion of the railway to be affected, or may direct an inspecting engineer, or such other person as it deems advisable to appoint, to inspect the locality in question, and, if expedient, there to hold an inquiry as to the necessity or requirements for such drainage or pipes, and to make a full report thereon to the Board.

Terms and
conditions.

(3) The Board may upon such report, or in its discretion, order how, where, when, by whom and upon what terms and conditions such drainage may be effected, or pipes laid, constructed and maintained, having due regard to all proper interests.

When
order not
required.

(4) An order of the Board shall not be required in cases in which water pipes or other pipes are to be laid or maintained under the railway, with the consent of the railway company, in accordance with any general regulations, plans or specifications adopted or approved by the Board for such purpose. R.S.O. 1914, c. 185, s. 109.

110.—(1) Whenever, by virtue of any Act, proceedings may be had or taken by any municipal corporation or landowner for any drainage, or drainage works, including the construction, enlargement, improvement or extension of any ditch or watercourse upon or across the property of any landowner, such proceedings may be had or taken by such municipal corporation or landowner for drainage or drainage works upon and across the railway and land of the company, in the place of the proceedings before the Board provided for by the next preceding section.

Drainage
proceedings
under Pro-
vincial Acts.

(2) Thereupon such Act shall apply to the land of the company upon or across which such drainage or other work is required, subject, however, to any previous order or direction of the Board made or given with respect to drainage of the same land, and the company shall have the option of constructing the portion of any drain or drainage work required to be constructed upon, along, under or across its railway or land.

Application
of such
Acts.

(3) In the event of the company not exercising such option, and completing such work within a reasonable time and without any unnecessary delay, such work may be constructed or completed in the same manner as any other portions of such work are to be constructed under the provisions of such Act.

Where
delay.

(4) Notwithstanding anything in this section, no such drain or drainage works shall be constructed or reconstructed upon, along, under or across the railway or land of the company until the character of such works or the specifications or plans thereof have been first submitted to and approved of by the Board.

Approval
of Board.

(5) The proportion of the cost of drain or drainage works upon, along, under or across the railway or land of the company to be borne by the company shall in such cases be based upon the increase of cost of such work caused by the construction and operation of the railway. R.S.O. 1914, c. 185, s. 110.

Cost of
work.

Canals, Ditches, Wires, etc.

111.—(1) When any person having authority to create, develop, enlarge or change any water power, or any electrical or power development by means of water, or to develop and operate mineral claims or mines, desires for any such purpose to carry any canal, tunnel, flume pipe, ditch or wire across, over or under any railway, and is unable to agree with the railway company as to the terms and conditions upon which the same may be so carried over, under or across the said railway, an application may be made to the Board for leave to construct the necessary works.

When
canals,
pipes or
wires
require to
be carried
across a
railway.

Applica-
tion to
Board.

Plan and
profile.

(2) Upon such application the applicant shall submit to the Board a plan and profile of the railway at the point where it is desired to make such crossing, and a plan or plans showing the proposed method of carrying such canal, tunnel, flume pipe, ditch or wire across, over or under the said railway, and such other plans, drawings and specifications as the Board in any case or by any regulation requires.

Terms of
order.

(3) The Board may, by order, grant such application on such terms and conditions as to protection and safety, payment of compensation or otherwise, as it deems just and proper, may change the plans, profiles, drawings and specifications so submitted, and fix the place and mode of crossing, and may give directions as to the method in which the works are to be constructed and as to supervision of the construction of the works and the maintenance thereof, and may order that detailed plans, drawings and specifications of any works, structures, equipment or appliances required shall, before construction or installation, be submitted to and approved by the Board. R.S.O. 1914, c. 185, s. 111.

Farm Crossings.

Farm cross-
ings.

112.—(1) Every company shall make crossings for persons across whose land the railway is carried convenient and proper for the crossing of the railway for farm purposes.

Care of
live stock.

(2) Live stock in using such crossing shall be in charge of some competent person who shall take all reasonable care and precaution to avoid accidents. R.S.O. 1914, c. 185, s. 112.

Necessary
crossings
may be
ordered by
Board.

113.—(1) The Board may, upon the application of any landowner, order the company to provide and construct a suitable crossing across the railway wherever in any case the Board deems it necessary for the proper enjoyment of his land, on either side of the railway, and safe in the public interest.

Details.

(2) The Board may order and direct how, when, where, by whom, and upon what terms and conditions, such crossing shall be constructed and maintained. R.S.O. 1914, c. 185, s. 113.

Fences, Gates and Cattle-guards.

Fences, etc.,
to be kept
up.

114.—(1) The company shall erect and maintain upon the railway

Height.
and place.

(a) fences of a minimum height of four feet six inches on each side of the railway;

Gates.

(b) swing gates in such fences, of the height of the fence, with proper hinges and fastenings, at farm crossings: provided that sliding or hurdle gates, constructed before the 14th day of May, 1906, may be maintained; and

(c) cattle-guards, on each side of the highway, at every highway crossing at rail-level with the railway. Cattle-guards.

(2) The railway fences at every such crossing shall be turned into the respective cattle-guards on each side of the highway. Fences to be turned into cattle guards.

(3) Subsections 1 and 2 shall not apply where a railway is being operated along a public highway. Except along highway.

(4) Such fences, gates and cattle-guards shall be suitable and sufficient to prevent cattle, horses and other animals from getting on the railway lands. Nature of fences, etc.

(5) The Board may, upon application made to it by the company, relieve the company, temporarily or otherwise, from erecting and maintaining such fences, gates and cattle-guards, where the railway passes through any locality in which, in the opinion of the Board, such works and structures are unnecessary. Exemption by Board.

(6) Where the railway is being constructed through enclosed lands it shall be the duty of the company to take effective measures to prevent cattle or other animals escaping from or getting upon such enclosed lands or upon the property of the company by reason of any act or thing done by the company, its contractors, agents or employees. Where lands are enclosed.

(7) The persons for whose use farm crossings are furnished shall keep the gates at each side of the railway closed when not in use. R.S.O. 1914, c. 185, s. 114. Duty of users to close gates.

115. Where the railway passes alongside of and immediately adjacent to a public highway the company shall not be required to erect and maintain a fence between the company's land and the highway unless the Board otherwise orders or directs; but where the railway is diverted from alongside of the highway the company shall erect and maintain cattle-guards at the point of diversion, and the railway fences at such point shall be turned into the cattle-guards. R.S.O. 1914, c. 185, s. 115. Fencing line adjoining highway.

Bridges, Tunnels and other Structures.

116.—(1) Every bridge, tunnel or other erection or structure, over, through or under which any railway passes, shall be so constructed and maintained as to afford, at all times, an open and clear headway of at least seven feet between the top of the highest freight car used on the railway and the lowest beam, member, or portion of that part of such bridge, tunnel, erection or structure, which is directly over the space liable to be traversed by such car in passing thereunder. Headway in tunnels and bridges.

(2) The Board may, if necessary, require any existing bridge, tunnel or other erection or structure to be reconstructed or altered, within such time as it may order, so as to Alteration of existing structures.

comply with the requirements mentioned in the last preceding subsection; and any such bridge, tunnel, or other erection or structure when so reconstructed or altered shall thereafter be maintained accordingly.

Space.

(3) Except by leave of the Board the space between the rail level and such beams, members or portions of any such structure, constructed after the 14th day of May, 1906, shall in no case be less than twenty-two feet six inches.

Where
structures
not owned
by company.

(4) If, in any case, it is necessary to raise, reconstruct or alter any bridge, tunnel, erection or structure not owned by the company, the Board, upon application of the company, and upon notice to all parties interested, or without any application, may make such order, allowing or requiring such raising, reconstruction or alteration, and upon such terms and conditions as to the Board shall appear just and proper and in the public interest.

What
may be
exempted.

(5) The Board may exempt from the operation of this section any bridge, tunnel, erection or structure, over, through or under which no trains, except such as are equipped with air brakes, are run.

Penalty for
default.

(6) Every company or owner shall incur a penalty not exceeding \$50 for each day of wilful neglect, omission or refusal to obey the provisions of this section. R.S.O. 1914, c. 185, s. 116.

When
approval
of Board
required for
alterations
in bridges,
etc.

117.—(1) The company shall not commence the construction or reconstruction of or any material alteration in any bridge, tunnel, viaduct, trestle, or other structure, through, over, or under which the company's trains are to pass, the span, or proposed span or spans, or length of which exceeds eighteen feet, until leave therefor has been obtained from the Board, unless such construction, reconstruction, or alteration is made in accordance with standard specifications and plans approved by the Board.

Application
therefor and
material.

(2) Upon any application to the Board for such leave, the company shall submit to the Board the detail plans, profiles, drawings and specifications of any such work proposed to be constructed, or reconstructed, and such other plans, profiles, drawings and specifications as the Board may, in any case or by regulation, require.

Powers of
Board.

(3) Upon any such application the Board may

Terms.

(a) make such order with regard to the construction of such work, and upon such terms and conditions as it deems expedient;

Alterations.

(b) make alterations in the detail plans, profiles, drawings and specifications so submitted;

Supervision.

(c) give directions respecting the supervision of any such work; and

(d) require that such other works, structures, equipment, appliances and materials be provided, constructed, maintained, used, and operated, and that such measures be taken, as, under the circumstances of each case, may appear to the Board best adapted for securing the protection, safety and convenience of the public. Other works.

(4) Upon such order being granted the company shall be authorized to construct such works in accordance therewith. Company may construct.

(5) Upon the completion of any such work the company shall, before using or operating the same, apply to the Board for an order authorizing such use or operation, and the Board may grant such order if it is satisfied that its orders and directions have been carried out, and that such work may be used or operated without danger to the public, and that the provisions of this section have been complied with. R.S.O. 1914, c. 185, s. 117. Leave of Board authorizing operation.

Railways Along or Across Highways.

118.—(1) Subject to the provisions of this Act respecting the operation of railways along highways, and subject to the company, not being a street railway company, making such compensation to adjacent or abutting landowners whose lands are injuriously affected, whether structurally or otherwise, by the construction or operation of the railway as the Board deems proper, the railway of the company may be carried upon, along, or across an existing highway upon leave therefor having been first obtained from the Board as hereinafter authorized; but the Board shall not grant leave to any company to carry any street railway or tramway, or any railway operated or to be operated as a street railway or tramway, along any highway which is within the limits of any city or town until the company has first obtained consent therefor by a by-law of such city or town. Railway on highway. Consent of municipality.

(2) The company shall, before obstructing any such highway by its works, turn the highway so as to leave an open and good passage for carriages, and on completion of the works shall restore the highway to as good a condition as it was originally in. Highway to be kept open.

(3) Every company which contravenes the provisions of this section shall incur a penalty of not less than \$40 for each such contravention. R.S.O. 1914, c. 185, s. 118. Penalty.

119. Whenever the railway crosses any highway at rail-level, whether the level of the highway remains undisturbed or is raised or lowered to conform to the grade of the railway, the top of the rail may, when the works are completed, unless otherwise directed by the Board, rise above or sink below the level of the highway to the extent of one inch without being deemed an obstruction. R.S.O. 1914, c. 185, s. 119. Variation of inch between rail and levels of highways permitted.

Deposit of
plan with
Board.

120.—(1) Upon any application for leave to construct a railway upon, along or across any highway, or to construct a highway along or across any railway, the applicant shall submit to the Board a plan and profile showing the portion of the railway and highway affected.

Powers of
Board.

(2) The Board may, by order, grant such application in whole or in part and upon such terms and conditions as to protection, safety and convenience of the public as the Board deems expedient, or may order that the railway be carried over, under or along the highway, or that the highway be carried over, under or along the railway, or that the railway or highway be temporarily or permanently diverted, or that such other work be executed, watchmen or other persons employed, or measures taken as under the circumstances appear to the Board best adapted to remove or diminish the danger or obstruction, in the opinion of the Board, arising or likely to arise in respect of the granting of the application in whole or in part in connection with the crossing applied for, or arising or likely to arise in respect thereof in connection with any existing crossing.

Provisions
as to taking
land and
compensation.

(3) When the application is for the construction of the railway upon, along or across a highway, all the provisions of law at such time applicable to the taking of land by the company, to its valuation and sale and conveyance to the company, and to the compensation therefor, shall apply to the land, exclusive of the highway crossing, required for the proper carrying out of any order made by the Board.

Supervision.

(4) The Board may exercise supervision in the construction of any work ordered by it under this section, or may give directions respecting such supervision.

Details to
be approved
by Board.

(5) When the Board orders the railway to be carried over or under the highway, or the highway to be carried over or under the railway, or any diversion temporarily or permanently of the railway or the highway, or any works to be executed under this section, the Board may direct that detailed plans, profiles, drawings and specifications be submitted to the Board.

Regulations
by Board.

(6) The Board may make regulations respecting the plans, profiles, drawings and specifications required to be submitted under this section. R.S.O. 1914, c. 185, s. 120.

Foot
bridges.

121. The Board may order any company to erect over its railway at or near, or in lieu of any highway crossing at rail level, a foot bridge or foot bridges for the purpose of enabling persons passing on foot along such highway to cross the railway by means of such bridge or bridges. R.S.O. 1914, c. 185, s. 121.

Width of
highway and
height of
overhead rail-
way crossings.

122. The highway at any overhead railway crossing shall not at any time be narrowed by means of any abutment or structure to an extent less than twenty feet, nor shall the

clear headway from the surface of the highway to the centre of any overhead structure, constructed after the 14th day of May, 1906, be less than fourteen feet, unless otherwise directed or permitted by the Board. R.S.O. 1914, c. 185, s. 122.

123.—(1) Where a railway is already constructed upon, Powers of Board as to existing crossings. along or across any highway the Board may, upon its own motion, or upon complaint or application by or on behalf of the Crown, or any municipal or other corporation, or any person aggrieved, order the company to submit to the Board, within a specified time, a plan and profile of such portion of the railway and may cause inspection of such portion and may inquire into and determine all matters and things in respect of such portion, and the crossing, if any, and may make such order as to the protection, safety and convenience of the public as it deems expedient, or may order that the railway be carried over, under or along the highway or that the highway be carried over, under or along the railway, or that the railway or highway be temporarily or permanently diverted, and that such other work be executed, watchmen or other persons employed, or measures taken as under the circumstances appear to the Board best adapted to remove or diminish the danger or obstruction, in the opinion of the Board, arising or likely to arise in respect of such portion or crossing, if any, or any other crossing directly or indirectly affected.

(2) When the Board of its own motion, or upon com- Provisions as to taking land and compensation. plaint or application, makes any order that a railway be carried across or along a highway, or that a railway be diverted, all the provisions of law at such time applicable to the taking of land by the company, to its valuation and sale and conveyance to the company, and to the compensation therefor, shall apply to the land, exclusive of the highway crossing, required for the proper carrying out of any order made by the Board.

(3) Notwithstanding anything in this Act, or in any other Act, the Board may, subject to the provisions of section 124 of this Act, order what portion, if any, of the cost is to be borne respectively by the company, municipal or other corporation, or person in respect of any order made by the Board under this or the preceding section, and such order shall be binding on and enforceable against any railway company, municipal or other corporation or person named in such order. R.S.O. 1914, c. 185, s. 123. Apportionment of cost of changes.

124. Where a railway is constructed after the passing of Railways hereafter constructed to provide for safety of public at highway crossings. this Act the company shall, at its own cost and expense, unless and except as otherwise provided by agreement, approved of by the Board, between the company and a municipal or other corporation or person, provide, subject to the order of the Board, all protection, safety and convenience

for the public in respect of any crossing of a highway by the railway. R.S.O. 1914, c. 185, s. 124.

All structures must be safely constructed and maintained.

125. Every structure by which any railway is carried over or under any highway, or by which any highway is carried over or under any railway, shall be so constructed and, at all times, be so maintained as to afford safe and adequate facilities for all traffic passing over, under or through such structure. R.S.O. 1914, c. 185, s. 125.

Inclination of highway.

126.—(1) The inclination of the ascent or descent, as the case may be, of any approach by which any highway is carried over or under any railway, or across it at rail level, shall not, unless the Board otherwise directs, be greater than one foot of rise or fall for every twenty feet of the horizontal length of such approach.

Fencing approaches.

(2) A good and sufficient fence, at least four feet six inches in height from the surface of the approach or structure, shall be made on each side of such approach, and of the structure connected with it. R.S.O. 1914, c. 185, s. 126.

Signboards at level crossings.

127. Signboards at every highway crossed at rail level by any railway shall be erected and maintained at each crossing, and shall have the words "Railway Crossing" painted on each side thereof, in letters at least six inches in length, and every company which neglects to comply with the requirements of this section shall incur a penalty not exceeding \$10 recoverable under *The Summary Convictions Act*. R.S.O. 1914, c. 185, s. 127.

Penalty.

Rev. Stat. c. 121.

Railway may be required to repair any level crossing out of repair.

128.—(1) Where a level crossing on any railway is out of repair the head of the municipality, under the jurisdiction of whose council the highway is, may serve a notice upon the company in the usual manner requiring the repair to be forthwith made; and if the company does not forthwith make the same the head of the municipality may transmit a copy of the notice so served to the Board; and thereupon the Board may order an inspection to be made and may appoint an inspector for that purpose who shall forthwith appoint a day when he will examine into the matter; and he shall, by mail, give notice to the head of the municipality, and to the company, of the day he so fixes; and upon the day so named he shall examine the crossing, and a certificate under his hand shall be final on the subject so in dispute between the parties; and if the inspector determines that any repairs are required he shall specify the nature thereof in his certificate and direct the company to make the same; and the company shall thereupon forthwith comply with the requirements of the certificate; and, in case of default, the corporation of the municipality may make such repairs and may recover all costs, expenses and outlays in the premises by action against the company.

Notice.

Inspector's certificate to be conclusive.

(2) The inspector shall be entitled to be paid \$10 and actual travelling expenses while engaged on the inspection, and in case he finds that any repairs are required he shall be paid by the company, but if he finds that no repairs are required he shall be paid by the municipality. Payment of inspectors.

(3) Neither this section nor any proceeding had thereunder shall affect any liability otherwise attaching to such company in the premises. R.S.O. 1914, c. 185, s. 128. Other liability.

Crossing and Junction of Railways.

129.—(1) The railway lines or tracks of any company shall not cross or join or be crossed or joined by or with any railway lines or tracks other than those of such company until leave therefor has been obtained from the Board as hereinafter provided. Leave necessary for crossings and junctions.

(2) Upon any application for such leave the applicant shall submit to the Board a plan and profile of such crossing or junction and such other plans, drawings and specifications as the Board may, in any case or by regulation, require. Application to Board and material.

(3) The Board may by order Powers of Board.

- (a) grant such application on such terms as to protection and safety as it may deem expedient;
- (b) change the plan and profile, drawings and specifications, so submitted and fix the place and mode of crossing or junction;
- (c) direct that one line or track or one set of lines or tracks be carried over or under another line or track or set of lines or tracks;
- (d) direct that such works, structures, equipment, appliances and materials be constructed, provided, installed, maintained, used or operated, watchmen or other persons employed, and measures taken, as under the circumstances appear to the Board best adapted to remove and prevent all danger of accident, injury or damage;
- (e) determine the amount of damage and compensation, if any, to be paid for any property or land taken or injuriously affected by reason of the construction of such works;
- (f) give directions as to supervision of the construction of the works; and
- (g) require that detailed plans, drawings and specifications of any works, structures, equipment or appliances required, shall, before construction or installation, be submitted to and approved by the Board.

Leave of
Board
authorizing
operation.

(4) No trains shall be operated on the lines or tracks of the applicant, over, upon or through such crossing or junction until the Board grants an order authorizing such operation.

Idem.

(5) The Board shall not grant such order until satisfied that its orders and directions have been carried out, and that the provisions of this section have been complied with.

Safety
appliances
on rail-level
crossings.

(6) The Board may order the adoption and use at any such crossing or junction, at rail levels, of such interlocking switch, derailing device, signal system, equipment, appliances and materials, as in the opinion of the Board will render it safe for engines and trains to pass over such crossing or junction without being brought to a stop. R.S.O. 1914, c. 185, s. 129.

Connections
of intersect-
ing rail-
way lines.

130.—(1) Where the lines or tracks of one railway are intersected or crossed by those of another, or upon any application for leave to make any intersection or crossing, or in any case in which the tracks or lines of two different railways run through or into the same city, town or village, the Board may, upon the application of one of the companies, or of a municipal corporation or other public body, or of any person interested, order that the lines or tracks of such railways shall be so connected at or near the point of intersection or crossing, or in or near such city, town or village, as to admit of the safe and convenient transfer or passing of engines, cars and trains from the tracks or lines of one railway to those of another, and that such connection shall be maintained and used.

Terms and
costs.

(2) In and by the order for such connection, or from time to time subsequently, the Board may determine by what company or companies, or other corporations or persons, and in what proportions, the cost of making and maintaining any such connection shall be borne, and upon what terms traffic shall be thereby transferred from the lines of one railway to those of another. R.S.O. 1914, c. 185, s. 130.

Case of
intersection
with a rail-
way author-
ized by the
Dominion
Parliament.

131.—(1) Where the lines or tracks of any railway, the construction or operation of which is authorized by this Legislature, are intersected or crossed by those of a railway, the construction or operation of which is authorized by the Parliament of Canada, or in any case in which the lines or tracks of any two such railways run through or into the same city, town or village, and it is desired by one of such companies or by any municipal corporation or other public body, or any person interested, that the lines or tracks of such railways should be connected, so as to admit of the safe and convenient transfer of engines and trains from the lines or tracks of one railway to those of another, and for the reasonable receiving, forwarding, delivering, and interswitching of traffic

between such railways, the following proceedings may be had and taken:—

- (a) Either of such companies, or any municipal corporation or other public body, or any person interested, may file with the secretary, and with the secretary of the Board of Railway Commissioners for Canada, an application for an order that such connection should be required to be made together with evidence of service of such application upon the railway companies interested or affected, and where the application is not made by the municipal corporation, upon the head of the municipal corporation of the municipality within which the proposed connection is to be made. Application to Board and to Dominion Board.
- (b) After the receipt of the application, the Board, and the Board of Railway Commissioners for Canada, may, by joint session or conference, in conformity with the practice to be established by them, hear and determine the application, and may order that the lines and tracks of such railways shall be so connected at or near the point of intersection, or in or near such city, town or village, upon such terms and conditions and subject to such plans as they may deem proper. Joint order of boards.
- (c) The Chairman of the Board, and the Chairman of the Board of Railway Commissioners for Canada, may make rules of procedure and practice covering the making of such applications and the hearing and disposition thereof, and may vary, alter or rescind the same from time to time. Power to make rules governing such applications.
- (d) The Chairman of the Board, and the Chairman of the Board of Railway Commissioners for Canada, may from time to time assign or appoint from each Board the members comprising the Joint Board that may be required to sit for the hearing and determining of such applications as they arise. Membership of joint Board.
- (e) The order aforesaid may be made a rule of the Exchequer Court of Canada, and may be enforced in like manner as a rule, order or decree of such court. Order may be made Rule of Court.

(2) "Railway" for the purposes of this section shall include a steam or electric railway, street railway, tramway and incline railway. Interpretation. R.S.O. 1914, c. 185, s. 131.

Mines and Minerals.

Mines to be protected.

132. The company shall not, without the authority of the Board, locate the line of its proposed railway or construct the same or any portion thereof so as to obstruct or interfere with or injuriously affect the working of or the access or adit to any mine then open, or for the opening of which preparations are, at the time of such location, being lawfully and openly made. R.S.O. 1914, c. 185, s. 132.

Company not entitled to minerals.

133.—(1) The company shall not, unless the same have been expressly purchased, be entitled to any mines, ores, metals, coal, slate, mineral oils, gas or other minerals in or under any land purchased by it, or taken by it under any compulsory powers given it by this Act, except only such parts thereof as are necessary to be dug, carried away or used in the construction of the works.

Exception.

Not included in conveyance.

(2) All such mines and minerals, except as provided by subsection 1, shall be deemed to be excepted from the conveyance of such land, unless they have been expressly named therein and conveyed thereby. R.S.O. 1914, c. 185, s. 133.

Prohibition of mining within 40 yards of railway.

134.—(1) No owner, lessee or occupier of any such mines or minerals lying under the railway or any of the works connected therewith, or within forty yards therefrom, shall work the same until leave therefor has been obtained from the Board.

Application to Board.

(2) Upon any application to the Board for leave to work any such mines or minerals the applicant shall submit a plan and profile of the portion of the railway to be affected thereby, and of the mining works or plant affecting the railway, proposed to be constructed or operated, giving all reasonable and necessary information and details as to the extent and character of the same.

Terms for protection of the public.

(3) The Board may grant such application upon such terms and conditions for the protection and safety of the public as the Board deems expedient, and may order that such other works be executed, or measures taken, as under the circumstances appear to the Board best adapted to remove or diminish the danger arising or likely to arise from such mining operations. R.S.O. 1914, c. 185, s. 134.

Compensation of mine-owner for loss through severance of mine.

135. The company shall, from time to time, pay to the owner, lessee or occupier of any such mines such compensation as the Board shall order to be paid to such owner, lessee or occupier for and on account of any severance of the land lying over such mines by the railway, or of the working of such mines being prevented, stopped or interrupted, or of the same being worked in such manner and under such restrictions as not to prejudice or injure the railway, and

also for any minerals not purchased by the company which cannot be obtained by reason of making and maintaining the railway. R.S.O. 1914, c. 185, s. 135.

136. If necessary, in order to ascertain whether any such mines are being worked, or have been worked, so as to damage the railway or works or in such manner as to be detrimental to the safety of the public using the railway or of the tracks and trains of the company, it shall be lawful for the company, with the written permission and authorization of the Board, after giving twenty-four hours' notice in writing, to enter upon any lands through or near which the railway passes wherein any such mines are being worked, and to enter into and return from any such mines or the works connected therewith; and for that purpose it shall be lawful for them to make use of any apparatus of such mines, and to use all necessary means for discovering the distance from the railway to the parts of such mines which are being worked. R.S.O. 1914, c. 185, s. 136.

Power of company to enter mines for purpose of ascertaining whether working endangers railway.

137. If the owner, lessee or occupier of any such mine refuses to allow any person appointed by the company for that purpose to enter into and inspect any such mines or works in manner aforesaid, every person so offending shall, for every such refusal, forfeit to the company a sum not exceeding \$100. R.S.O. 1914, c. 185, s. 137.

Penalty for refusing company access to mines.

Prevention of Fire.

138. The company shall at all times maintain and keep its right of way free from dead or dry grass, weeds and other unnecessary inflammable matter. R.S.O. 1914, c. 185, s. 138.

Removing inflammable matter.

139.—(1) Whenever damage is caused to any property by a fire started by any railway locomotive the company making use of such locomotive, whether guilty of negligence or not, shall be liable for such damage, but if it is shown that the company has used modern and efficient appliances, and has not otherwise been guilty of any negligence, the total amount of compensation recoverable from the company, under this section, in respect of any one or more claims for damage from a fire or fires started by the same locomotive and upon the same occasion, shall not exceed \$5,000.

Liability for fire caused by locomotive.

Limit.

(2) If there is any insurance existing on the property destroyed or damaged the total amount of damages sustained by any claimant shall be reduced by the amount accepted or recovered by or for the benefit of such claimant in respect of such insurance.

Reduction of damages where insurance.

(3) No action shall lie against the company by reason of anything in any policy of insurance or by reason of payment of any money thereunder.

Railway and insurance contract.

Limitation.

(4) The limitation of one year prescribed by section 267 shall run from the date of final judgment in any action brought by the assured to recover such insurance money, or, in the case of settlement, from the date of the receipt of such moneys by the assured, as the case may be.

Apportionment of compensation.

(5) The compensation, in case the total amount recovered therefor is less than the claims established, shall be apportioned amongst the persons who suffered the loss, as the court or judge may determine.

Insurable interest in property.

(6) The company shall have an insurable interest in all property upon or along its route, for which it may be held liable to compensate the owners for loss or damage by fire caused by a railway locomotive, and may procure insurance thereon on its own behalf. R.S.O. 1914, c. 185, s. 139.

Powers of Board as to fire guards.

140. The Board may order, upon such terms and conditions as it deems expedient, that fire guards be established and maintained by the company along the route of its railway, and upon any land of His Majesty or of any person lying along such route, and, subject to the terms and conditions of any such order, the company may at all times enter into and upon any such land for the purpose of establishing and maintaining such fire guards thereon, and freeing from dead or dry grass, weeds and other unnecessary inflammable matter, the land between such fire guards and the line of railway. R.S.O. 1914, c. 185, s. 140.

Limitation of Time for Construction.

Time for construction limited.

141. If the construction of the railway, street railway, or incline railway is not commenced, and fifteen per centum of the amount of the capital stock is not expended thereon, within two years after the passing of the special Act, or in case of a railway other than a street railway, if the railway is not finished and put in operation within five years from the passing of such Act, the powers granted by it or by this Act shall cease and be null and void as respects so much of the railway as then remains uncompleted. R.S.O. 1914, c. 185, s. 141.

Use of Steam During Construction.

Electric companies may use steam for construction.

142. A company while constructing a line of railway to be operated by electricity on a right of way owned by the company may use steam as a motive power during such construction and at other times for construction purposes. R.S.O. 1914, c. 185, s. 142.

Contracts for Construction.

Contracts for construction of line, etc.

143. The company may contract with any individual, corporation or association of individuals for the construction or equipment of the railway or any part thereof, including or

excluding the purchase of right of way, and may pay therefor, either in whole or in part, in cash or in bonds, or in paid-up stock of the company, and may pay or agree to pay in such paid-up stock or bonds such sums as it may deem expedient to engineers, or for the right of way, or material, plant or rolling stock, and also for the services of the promoters or other persons who may be employed by the directors for the purpose of assisting them and furthering the undertaking or purchasing the right of way, material, plant or rolling stock; but no such contract shall be of any force or validity unless first authorized by resolution passed by the votes of the shareholders, in person or by proxy, representing two-thirds in value of the whole amount paid up of the total capital stock of the company then issued and outstanding, at a general meeting of the shareholders specially called for the purpose of considering such matters, and the stock so acquired by any person shall for all purposes be deemed to be paid up in cash. R.S.O. 1914, c. 185, s. 143.

Payment in
stock or
bonds.

Assent of
shareholders.

OPERATION AND SERVICE.

Regulations Governing the Running of Trains.

144. All regular trains shall be started and run as nearly as practicable at regular hours fixed by public notice. R.S.O. 1914, c. 185, s. 144.

Regular hours
and public
notice.

145.—(1) Every company shall have a blackboard put upon the outside of the station house over the platform of the station, in some conspicuous place, at each station of such company at which there is a telegraph or telephone office; and when any passenger train or car is overdue at any such station, according to the time-table of such company, the station agent or person in charge at such station shall write, or cause to be written, with white chalk on such blackboard a notice stating, to the best of his knowledge and belief, the time when such overdue train or car may be expected to reach such station.

Notice board
at stations.

Overdue
trains.

Time when
expected.

(2) If there is any further change in the expected time of arrival the station agent or person in charge of the station shall write, or cause to be written, on the blackboard in like manner a fresh notice stating, to the best of his knowledge and belief, the time when such overdue train or car may then be expected to reach such station.

Further
changes.

(3) Every such company, station agent or person in charge at any such station shall incur a penalty not exceeding \$5 for every wilful neglect, omission or refusal to obey the provisions of this section, recoverable under *The Summary Convictions Act*. R.S.O. 1914, c. 185, s. 145.

Penalty for
omission.

Rev. Stat.
c. 121.

Accommodation.

146.—(1) The company shall

At starting point junctions and stopping places.

(a) furnish, at the place of starting, and at the junction of the railway with other railways, and at all stopping places established for such purpose, adequate and suitable accommodation for the receiving and loading of all traffic offered for carriage upon the railway;

Carriage and delivery.

(b) furnish adequate and suitable accommodation for the carrying, unloading, and delivering of all such traffic;

No delay.

(c) without delay, and with due care and diligence, receive, carry, and deliver all such traffic; and

Appliances for carriage and delivery.

(d) furnish and use all proper appliances, accommodation and means necessary for receiving, loading, carrying, unloading and delivering such traffic.

Including accommodation for private sidings.

(2) Such adequate and suitable accommodation shall include reasonable facilities for the junction of private sidings or private branch railways with any railway belonging to or worked by the company and reasonable facilities for receiving, forwarding and delivering traffic upon and from those sidings or private branch railways, together with the placing of cars and moving them upon and from such private sidings and private branch railways.

Powers of Board.

(3) If in any case such accommodation is not, in the opinion of the Board, furnished by the company, the Board may order the company to furnish the same within such time or during such period as the Board deems expedient, having regard to all proper interests; or may prohibit or limit the use, either generally or upon any specified railway or part thereof, of any engines, locomotives, cars, rolling stock, apparatus, machinery, or devices, or any class or kind thereof, not equipped as required by this Act, or by any orders or regulations of the Board made within its jurisdiction under the provisions of this Act.

Payment of tolls.

(4) Such traffic shall be taken, carried to and from, and delivered at the places aforesaid on the due payment of the toll lawfully payable therefor.

Regulation of time to allow connections between railways for passengers and mails.

(5) Where a company's railway crosses or joins or approaches, in the opinion of the Board, sufficiently near to any other railway upon which passengers or mails are transported, the Board may order the company to so regulate the running of its trains carrying passengers or mails, and the places and times of stopping them, as to afford reasonable opportunity for the transfer of passengers and mails between its railway and such other railway, and may order the company to furnish reasonable facilities and accommodation for such purpose.

(6) For the purposes of this section the Board may order that specific works be constructed or carried out, or that property be acquired, or that specified tolls be charged, or that cars, motive power or other equipment be allotted, distributed, used or moved as specified by the Board, or that any specified steps, systems, or methods be taken or followed by any particular company, or companies, or by railway companies generally.

Specific
works may
be ordered
by Board.

(7) Every person aggrieved by any neglect or refusal of the company to comply with the requirements of this section shall, subject to this Act, have an action therefor against the company, from which action the company shall not be relieved by any notice, condition or declaration, if the damage arises from any negligence or omission of the company or of its servants.

Right of
action on
default.

(8) The Board may make regulations, applying generally or to any particular railway or any portion thereof, imposing charges for default or delay by any company in furnishing accommodation, appliances, or means as aforesaid, or in receiving, loading, carrying, unloading or delivering traffic, and may enforce payment of such charges by companies to any person injuriously affected by such default or delay; and any amount so received by any person shall be deducted from the damages recoverable or recovered by such person for such default or delay; and the Board may, by order or regulation, determine what circumstances shall exempt any company from payment of any such charges. R.S.O. 1914, c. 185, s. 146.

Demurrage.

147. Every employee of the company employed in a passenger train or at a passenger station shall wear upon his hat or cap a badge which shall indicate his office, and he shall not, without such badge, be entitled to demand or receive from any passenger any fare or ticket, or to exercise any of the powers of his office, or to interfere with any passenger or his baggage or property. R.S.O. 1914, c. 185, s. 147.

Employees
in passen-
ger trains
or stations
to wear
badges.

148.—(1) The fare or toll shall be due and payable by every passenger on entering the car or other conveyance, and every passenger who refuses to pay his fare may, by the conductor of the train and the train servants of the company, be expelled from and put out of the train with his baggage, at any usual stopping place or near any dwelling house, as the conductor elects, the conductor first stopping the train and using no unnecessary force. R.S.O. 1914, c. 185, s. 148.

Expulsion
on refusal
to pay fare.

(2) Any passenger upon a car of an electric or street railway who refuses to pay his fare shall also be liable to a penalty not exceeding \$10, recoverable under *The Summary Convictions Act*. 1924, c. 51, s. 3.

Refusal to
pay fare.

No claim
for injuries
in certain
cases.

149. No person injured while on the platform of a car, or on any baggage or freight car, in violation of the printed regulations posted up at the time, shall have any claim in respect of the injury, if room inside of the passenger cars, sufficient for the proper accommodation of the passengers, was furnished at the time. R.S.O. 1914, c. 185, s. 149.

Position of
passenger
cars.

150.—(1) No passenger train shall have any freight, merchandise, or lumber car in the rear of any passenger car in which any passenger is carried.

Penalty for
violation.

(2) Every officer or employee of a company who directs, or knowingly permits, any freight, merchandise or lumber car to be so placed shall incur a penalty not exceeding \$10, recoverable under *The Summary Convictions Act*. R.S.O. 1914, c. 185, s. 150.

Rev. Stat.
c. 121.

Baggage
checks.

151.—(1) A check shall be affixed by the company to every parcel of baggage having a handle, loop or suitable means for attaching a check thereupon, delivered by a passenger to the company for transport, and a duplicate of such check shall be given to the passenger delivering the same.

Excess
baggage.

(2) In the case of excess baggage the company shall be entitled to collect from the passenger, before affixing any such check, the toll authorized under this Act.

Liability for
refusing to
check
baggage.

(3) If such check is improperly refused on demand the company shall be liable to such passenger for the sum of \$8 recoverable by action.

Saving.

(4) This section shall not apply to any train or car operated by electricity unless the Board so orders. R.S.O. 1914, c. 185, s. 151.

Transportation of
dangerous
goods.

152.—(1) No passenger shall carry, nor shall the company be required to carry upon its railway gunpowder, dynamite, nitro-glycerine or any other goods which are of a dangerous or explosive nature.

Nature
must be
marked on
outside.

(2) Every person who sends by the railway any such goods shall distinctly mark their nature on the outside of the package containing the same and otherwise give notice in writing to the station agent or employee of the company whose duty it is to receive such goods and to whom the same are delivered.

Notice.

Penalty.

(3) Every person who contravenes this section shall forfeit to the company the sum of \$500 for every such contravention. R.S.O. 1914, c. 185, s. 152.

Company
may refuse
to carry.

153.—(1) The company may refuse to take any package or parcel which it suspects to contain goods of a dangerous nature, or may require the same to be opened to ascertain the fact.

(2) The company shall not carry any such goods of a dangerous nature except in cars specially designated for that purpose, on each side of each of which shall plainly appear in large letters the words "Dangerous Explosives." Carriage of such goods.

(3) For each neglect to comply with the provisions of this section the company shall incur a penalty of \$500. Penalty. R.S.O. 1914, c. 185, s. 153.

Crossing Draw or Swing Bridge.

154.—(1) When any railway passes over any navigable water or canal by means of a draw or swing bridge which is subject to be opened for navigation every train shall, before coming on or crossing over such bridge, be brought to a full stop and shall not thereafter proceed until a proper signal has been given for that purpose. Trains to stop at swing bridges.

(2) In default the company shall incur a penalty not exceeding \$400. Penalty.

(3) Any employee who fails to comply with the rules of the company made for carrying into effect the provisions of this section shall incur a penalty not exceeding \$400, recoverable under *The Summary Convictions Act*, and upon conviction shall also be liable to imprisonment for any term not exceeding six months or both. Employee. Rev. Stat. c. 121.

(4) Wherever there is in use on any railway at any such bridge an interlocking switch and signal system, or other device which, in the opinion of the Board, renders it safe to permit engines and trains to pass over such bridge without being brought to a stop the Board may, by order, permit engines and trains to pass over such bridge without stopping under such regulations as to speed and other matters as the Board deems proper. Where safety devices installed. R.S.O. 1914, c. 185, s. 154.

Crossing Highways.

155.—(1) When any train is approaching a highway crossing at rail-level the engine whistle shall be sounded at least eighty rods before reaching such crossing, and the bell shall be rung continuously from the time of sounding the whistle until the engine has crossed such highway. Use of bell and whistle.

(2) In the case of a car or locomotive operated by electricity an air whistle shall be blown or the gong be sounded continuously for eighty yards before reaching such crossing. Electric cars or locomotives.

(3) The company shall for each neglect to comply with the provisions of this section incur a penalty of \$8, recoverable under *The Summary Convictions Act*, and shall also be liable for all damage sustained by any person by reason of such neglect. Penalty. Rev. Stat. c. 121. Damages.

Penalty on employee.

(4) Every employee of the company who neglects to comply with this section shall for each offence incur a like penalty.

Exception.

(5) This section shall not apply to trains approaching such a crossing within the limits of a city or town where a municipal by-law is in force prohibiting the sounding of the whistle or gong or the ringing of the bell. R.S.O. 1914, c. 185, s. 155.

Signal at rail-level crossings.

156.—(1) No train shall pass over any crossing where two main lines of railway or the main tracks of any branch lines cross each other at rail-level, whether they are owned by different companies or the same company, until a proper signal has been received by the conductor, engineer or motorman in charge of such train, engine or motor car from a competent person or watchman in charge of such crossing that the way is clear.

Electric railway crossings.

(2) In the case of an electric car crossing any railway track at rail-level, if there is no competent person or watchman in charge of the crossing, it shall be the duty of the conductor, before crossing and before giving the signal to the motorman that the way is clear and to proceed, to go forward and see that the track to be crossed is clear.

Stoppage of trains at rail-level crossings.

(3) Every train shall, before it passes over any such crossing, be brought to a full stop; but whenever there is in use at any such crossing an interlocking switch and signal system or other device which, in the opinion of the Board, renders it safe to permit trains to pass over such crossing without being brought to a stop the Board may, by order, permit such trains to pass over such crossing without stopping under such regulations as to speed and other matters, as the Board deems proper.

Where safety devices are installed.

Where Dominion Board has made order.

(4) Nothing in this section shall apply to a case in which the Board of Railway Commissioners for Canada has jurisdiction to make an order and has made an order for the protection of such crossing. R.S.O. 1914, c. 185, s. 156.

Rate of speed in unfenced portions of cities.

157.—(1) No train shall pass in or through any thickly peopled portion of any city, town or village at a speed greater than ten miles an hour, unless the track is fenced or properly protected in the manner prescribed by this Act, or unless permission is given by some regulation or order of the Board.

Board may limit.

(2) The Board may limit such speed in any case to any rate which it deems expedient.

Rate of speed at rail-level crossings in cities, towns and villages.

(3) Subject to the provisions of subsection 5 of this section no train shall pass over any highway crossing at rail-level in any thickly peopled portion of any city, town or village at a greater speed than ten miles an hour, unless such crossing is constructed and thereafter maintained and protected in ac-

cordance with the orders, regulations and directions of the Board in force with respect to such crossing, or unless permission is given by some regulation or order of the Board.

(4) The Board may from time to time fix the speed in any case at any rate that it deems proper. Board may direct.

(5) No train shall pass over any highway crossing at rail-level at a greater speed than ten miles an hour, if at such crossing an accident has happened subsequent to the 1st day of January, 1905, by a moving train causing bodily injury or death to a person using such crossing, unless and until such crossing is protected to the satisfaction of the Board; and no train shall pass over any highway crossing at rail-level at a greater speed than ten miles an hour in respect of which crossing an order of the Board has been made to provide protection for the safety and convenience of the public and which order has not been complied with. R.S.O. 1914, c. 185, s. 157. Rate of speed at certain crossings.

158.—(1) Whenever in any city, town or village any train is passing over or along a highway at rail-level, and is not headed by an engine or electric car moving forward in the ordinary manner, the company shall station on that part of the train, or of the tender if that is in front, which is then foremost a person who shall warn persons standing on, or crossing, or about to cross, the track of such railway. Trains or cars moving reversely in cities, etc.

(2) For every contravention of any of the provisions of this section, or of any of the next preceding two sections, the company shall incur a penalty of \$100, recoverable under *The Summary Convictions Act*. R.S.O. 1914, c. 185, s. 158. Penalty. Rev. Stat. c. 121.

159.—(1) Whenever any railway crosses any highway at rail-level the company shall not, nor shall its officers, agents or employees, wilfully permit any engine, tender or car, or any portion thereof, to stand on any part of such highway for a longer period than five minutes at one time, or in shunting to obstruct public traffic for a longer period than five minutes at any one time, or for any less period which the Board may prescribe. Trains must not stand on rail-level crossings more than five minutes

(2) For every contravention of this section every such officer, agent or employee who has directly under or subject to his control, management or direction any engine, tender or car which, or any portion of which, is allowed to stand on such highway longer than the time specified in this section shall incur a penalty not exceeding \$50, recoverable under *The Summary Convictions Act*, and the company shall also for each such violation incur a like penalty, but if such alleged violation is, in the opinion of the justice, excusable the prosecution for the penalty may be dismissed, and the costs shall be in his discretion. R.S.O. 1914, c. 185, s. 159. Penalty. Rev. Stat. c. 121. Where violation excusable.

Sleeping and Parlour Cars.

Sleeping
and parlour
cars.

160.—(1) The company may contract with any person for the hauling, by the special or regular trains of the company, of the parlour, drawing-room or sleeping cars of such person in which extra accommodation is furnished.

May charge
for extra
accommoda-
tion.

(2) Such person may charge for the carriage and transportation of persons and property therein such reasonable compensation as may be fixed by the Board for such extra accommodation, in addition to the fare and charges for the carriage and transportation of passengers and property in the ordinary cars of the company.

Liability of
company.

(3) The company so contracting shall be liable in the same way and to the same extent as if the cars were owned by it.

Other obli-
gations not
affected.

(4) Nothing in this section shall relieve the company from the obligation to furnish sufficient ordinary cars for the reasonable accommodation of the travelling public. R.S.O. 1914, c. 185, s. 160.

Stations.

Stations.

161.—(1) The company shall, when thereto directed by order of the Board, maintain and operate stations, with such accommodation or facilities in connection therewith as are defined by the Board, at such points on the railway as are designated in such order.

Accommoda-
tion.

(2) Every station of the company shall be erected, operated and maintained with good and sufficient accommodation and facilities for traffic.

Approval of
location upon
by Board.

(3) Before the company proceeds to erect any station upon its railway the location of such station shall be approved of by the Board.

No discon-
tinuance
without
leave.

(4) No station established by a company for the reception or delivery of passengers or property, or both, shall be discontinued without the consent of the Board.

Order by
Board upon
complaint
as to
station
accommoda-
tion, etc.

(5) Upon the written complaint of ten or more persons interested setting forth that any of the provisions of this Act as to station accommodation or stopping places are being violated by the company, the Board shall forthwith investigate the complaint, and if, upon such investigation, it is found that such violation exists the Board shall issue an order to the company setting forth the nature of the improvements required and shall direct that the same be completed within such time as the Board may deem proper.

Right of
action.

(6) Every person aggrieved by any neglect or refusal in the premises shall, subject to this Act, have an action therefor against the company from which the company shall not be

relieved by any notice, condition or declaration or any agreement to the contrary if the damage arises from any negligence or omission of the company or of its servants. R.S.O. 1914, c. 185, s. 161.

MUNICIPAL BONUSES.

162.—(1) Where a municipal corporation grants a bonus or makes a gift to the company to the amount of \$20,000 or upwards, or holds stock in the company to that amount, the head of the municipality shall be *ex-officio* one of the directors of the company, in addition to the number of directors authorized by the special Act, and shall have the same rights, powers and duties as any of the directors of the company.

When head of municipality to be *ex-officio* a director.

(2) A municipal corporation owning or having a controlling interest in the capital stock of a railway, electric railway, street railway or incline railway shall not dispose of the railway or its stock so as to deprive it of such controlling interest except under the authority of a by-law passed with the assent of the municipal electors in accordance with the provisions of *The Municipal Act*. R.S.O. 1914, c. 185, s. 162.

Municipal corporation not to part with control without assent of electors.

Rev. Stat. c. 233.

BY-LAWS, RULES AND REGULATIONS.

163. The company may, subject to the provisions and restrictions in this and in the special Act, make by-laws, rules or regulations respecting

Powers of company respecting—

- (a) the mode by which, and the speed at which, any rolling stock used on the railway is to be moved; Speed.
- (b) the hours of the arrival and departure of trains; Timetables.
- (c) the loading and unloading of cars, and the weights which they are respectively to carry; Loads.
- (d) the receipt and delivery of traffic; Freight regulations.
- (e) the smoking of tobacco, expectorating, and the commission of any nuisance in or upon trains, stations or other premises occupied by the company; Nuisances.
- (f) the travelling upon or the using or working of the railway; Traffic and operation.
- (g) the employment and conduct of the officers and employees of the company; Conduct.
- (h) the due management of the affairs of the company; Management.
- (i) the number of passengers to be allowed in cars, their mode of entrance or exit, and the portion of the car or the class of car to be occupied by them. Passengers.

R.S.O. 1914, c. 185, s. 163.

Penalty for violation of by-laws.

Rev. Stat. c. 121.

Essentials to validity.

When approval of Board required.

Binding when approved.

Publication of by-laws, etc., as regards public.

As regards officers or employees.

Summary interference in certain cases.

Evidence of by-laws.

164. The company may, for the better enforcing the observance of any such by-law, rule or regulation, prescribe a penalty not exceeding \$25 for any contravention thereof by an officer or employee of the company, but no such penalty shall be recoverable except under *The Summary Convictions Act* which shall apply to proceedings for the recovery thereof. R.S.O. 1914, c. 185, s. 164.

165. All by-laws, rules and regulations, whether made by the directors or the company, shall be reduced to writing, be signed by the chairman or person presiding at the meeting at which they are adopted, have affixed thereto the common seal of the company and be kept in the office of the company. R.S.O. 1914, c. 185, s. 165.

166. All such by-laws, rules and regulations, except such as are of a private or domestic nature and do not affect the public generally or impose penalties, shall be submitted to the Board for approval, and the Board may approve of them or any of them, or any part thereof, and may, from time to time, rescind its approval, and until so approved, or after such approval has been rescinded, no such by-law, rule or regulation shall have any force or effect. R.S.O. 1914, c. 185, s. 166.

167. Such by-laws, rules and regulations while so approved shall be binding upon, and observed by, all persons, and shall be sufficient to justify all persons acting thereunder. R.S.O. 1914, c. 185, s. 167.

168.—(1) A printed copy of so much of any by-law, rule or regulation as affects any person, other than the shareholders, or the officers or employees of the company, shall be openly affixed and kept affixed to a conspicuous part of every station belonging to the company, so as to give public notice thereof to the persons interested therein or affected thereby.

(2) A printed copy of so much of any by-law, rule or regulation as relates to the conduct of or affects the officers or employees of the company shall be given to every officer and employee of the company thereby affected. R.S.O. 1914, c. 185, s. 168.

169. If the contravention or non-observance of any by-law, rule or regulation is attended with danger or annoyance to the public, or hindrance to the company in the lawful use of the railway, the company may summarily interfere, using reasonable force, if necessary, to prevent such violation, or to enforce observance, without prejudice to any penalty incurred in respect of such violation or non-observance. R.S.O. 1914, c. 185, s. 169.

170. A copy of any by-law, rule or regulation, certified as correct by the president, secretary or other executive officer of the company and bearing the seal of the company, shall be evidence thereof in any court. R.S.O. 1914, c. 185, s. 170.

171. Every written or printed document purporting to have been issued or authorized by a company, or any officer, agent or employee of a company, or any other person or company for or on its behalf, shall, as against the company, be received as *prima facie* evidence of the issue of such document by the company, and of the contents thereof, without any further proof than the mere production of such document. R.S.O. 1914, c. 185, s. 171.

Of documents authorized.

172. All by-laws, rules and regulations of a company operating its railway by electricity partly or wholly on a highway or of a street railway company shall be subject to any agreement between such company and the municipal corporation owning or maintaining such highway. R.S.O. 1914, c. 185, s. 172.

By-laws, etc., to be subject to agreements with municipalities.

INSPECTION OF RAILWAYS.

Inspecting Engineers.

173.—(1) Inspecting engineers may be appointed by the Board, subject to the approval of the Lieutenant-Governor in Council.

Appointment of inspecting engineers.

(2) It shall be the duty of every such inspecting engineer, upon being directed by the Board, to inspect any railway or any branch line, siding or portion thereof whether constructed or in the course of construction, to examine the stations, rolling stock, rails, road bed, right of way, tracks, bridges, tunnels, trestles, viaducts, drainage, culverts, railway crossings and junctions, highway and farm crossings, fences, gates and cattle-guards, telegraph, telephone or power or other lines of electricity, and all other buildings, works, structures, equipment, apparatus, and appliances thereon, or to be constructed or used thereon, or such part thereof as the Board may direct, and forthwith to report fully thereon in writing to the Board.

Duties.

(3) Every such inspecting engineer shall have the same powers with regard to any such inspection as by section 52 of *The Railway and Municipal Board Act* are conferred on an inspecting engineer.

Powers.

Rev. Stat. c. 225.

(4) Every company, and the officers and directors thereof, shall afford to any inspecting engineer such information as is within their knowledge and power in all matters inquired into by him, and shall submit to him all plans, specifications, drawings and documents relating to the construction, repair or state of repair of the railway or any portion thereof.

Duties of company to afford information.

(5) Every such inspecting engineer shall have the right, while engaged in the business of such inspection, to travel without charge on any of the ordinary passenger trains running on the railway, and to use without charge the telegraph and telephone wires and machinery in the offices of, or under the control of, any such company.

Inspecting engineers may travel free.

Use telegraph and telephone wires, etc.

Transmis-
sion of tele-
grams or
telephone.

Penalty
upon failure.

Rev. Stat.
c. 121.

Proof of
engineer's
authority.

Penalty for
obstructing
inspecting
engineers.

(6) The operators or officers employed in the telegraph or telephone offices of or under the control of the company shall, without unnecessary delay, obey all orders of any such inspecting engineer for transmitting messages; and every such operator or officer who neglects or refuses so to do shall, for every such offence, incur a penalty not exceeding \$40, recoverable under *The Summary Convictions Act*.

(7) The production of his appointment in writing, signed by the Chairman of the Board, or the secretary, shall be sufficient evidence of the authority of such inspecting engineer.

(8) Every person who wilfully obstructs any inspecting engineer in the execution of his duty shall incur a penalty not exceeding \$40, recoverable under *The Summary Convictions Act*. R.S.O. 1914, c. 185, s. 173.

Inspection of Line.

Leave of
Board before
opening.

174.—(1) No railway, nor any portion of a railway, shall be opened for the carriage of traffic, other than for the purposes of the construction of the railway by the company, until leave therefor has been obtained from the Board as hereinafter provided.

Application
to Board
and
material.

(2) When the company is desirous of so opening its railway, or any portion thereof, it shall make an application to the Board for authority therefor, supported by affidavit of its president, secretary, engineer or one of its directors, to the satisfaction of the Board, stating that such railway, or portion thereof, is, in his opinion, sufficiently completed for the safe carriage of traffic and ready for inspection.

Inspection.

(3) Before granting such application the Board shall direct an inspecting engineer to examine the railway, or portion thereof, proposed to be opened.

Order of
Board
when open-
ing reported
to be safe.

(4) If the inspecting engineer reports to the Board, after making such examination, that, in his opinion, the opening of the railway or portion thereof for the carriage of traffic will be reasonably free from danger to the public using the same, the Board may make an order granting such application, in whole or in part, and may name the time therein for the opening of the railway or such portion thereof, and thereupon the railway or such portion thereof as is authorized by the Board may be opened for traffic in accordance with such order.

When open-
ing reported
dangerous.

(5) If the inspecting engineer reports to the Board that, in his opinion, the opening of the railway or portion thereof would be attended with danger to the public using the same, by reason of the incompleteness of the works or permanent way, or the insufficiency of the construction or equipment of such railway or portion thereof, he shall state in his report

the grounds for such opinion, and the company shall be entitled to notice thereof, and shall be served with a copy of such report, and the Board may refuse such application, in whole or in part, or may direct a further or other inspection and report to be made.

Notice to be served on company.

(6) If thereafter, upon such further or other inspection or upon a new application under this section, the inspecting engineer reports that such railway or portion thereof may be opened without danger to the public the Board may make an order granting such application in whole or in part, and may name the time therein for the opening of the railway or such portion thereof, and thereupon the railway or such portion thereof as is authorized by the Board may be opened for traffic in accordance with such order.

Provision for further inspection.

Order for opening.

(7) The Board, upon being satisfied that public convenience will be served thereby, may, after obtaining a report of an inspecting engineer, allow the company to carry freight traffic over any portion of the railway not opened for the carriage of traffic in accordance with the preceding provisions of this section.

Leave to carry freight traffic.

(8) If any railway or portion thereof is opened contrary to the provisions of this section the company, or person to whom such railway belongs, shall forfeit to His Majesty the sum of \$200 for each day on which the railway or portion thereof is or continues open without such leave. R.S.O. 1914, c. 185, s. 174.

Penalty for irregular opening.

175.—(1) Whenever any complaint is made to the Board, or the Board receives information, that any railway or any portion thereof is dangerous to the public using the same from want of renewal or repair, or insufficient or erroneous construction, or from any other cause, or whenever circumstances arise, which, in its opinion, render it expedient the Board may direct an inspecting engineer to examine the railway or any portion thereof.

When railway out of repair.

Inspection.

(2) The Board may, upon the report of the inspecting engineer, order any repairs, renewals, reconstruction, alteration or new work, materials or equipment to be made, done, or furnished by the company, upon, in addition to or substitution for any portion of the railway which may, from such report, appear to the Board necessary or proper, and may order that until such repairs, renewals, reconstruction, alteration, and work, materials or equipment are made, done and furnished to its satisfaction no portion of the railway, in respect of which such order is made, shall be used, or used otherwise than subject to such restrictions, conditions and terms as the Board may in such order impose.

Board may order repairs.

May enjoin operation meantime.

(3) The Board may, by such order, condemn and thereby forbid further use of any rolling stock which, from such report, it may consider unfit to repair or use.

Rolling stock may be condemned.

Penalty for
non-com-
pliance.

(4) If, after notice of any such order made by the Board, the company uses any rolling stock which has been so condemned by the Board, or disobeys, or fails to comply with any order of the Board made under this section, the company shall incur a penalty of \$2,000.

Aiding and
abetting.

(5) Any person wilfully and knowingly aiding or abetting any such contravention shall incur a penalty of not less than \$20 nor more than \$200, recoverable under *The Summary Convictions Act*. R.S.O. 1914, c. 185, s. 175.

Rev. Stat.
c. 121.

Inspecting
engineer
may forbid
operation.

176.—(1) If, in the opinion of any inspecting engineer, it is dangerous for trains to pass over any railway or any portion thereof until alterations, substitutions or repairs are made thereon, or that any of the rolling stock should be run or used, he may, by notice in writing,

- (a) forthwith forbid the running of any train over such railway or portion of railway; or,
- (b) require that the same be run only at such times, under such conditions and with such precautions as he by such notice specifies; and
- (c) forbid the running or using of any such rolling stock.

What notice
shall state.

(2) Such notice shall state the reasons for such opinion of the inspecting engineer, and distinctly point out the defects or the nature of the danger to be apprehended.

Service of
notice.

(3) The notice may be served upon the company owning, running, or using such railway or rolling stock, or upon any officer having the management or control of the running of trains upon the railway, or the management or control of the rolling stock.

Action of
Board.

(4) The inspecting engineer shall forthwith report such notice to the Board, which may either confirm, modify or disallow the act or order of such engineer.

Notice
thereof.

(5) Notice of such confirmation, modification or disallowance shall be duly given to the company.

Penalty for
non-com-
pliance.

(6) If any company refuses or neglects to comply with any order of the Board, made under this section, the company shall, for each such refusal or neglect, forfeit to His Majesty the sum of \$2,000.

Aiding or
abetting.

(7) Any person wilfully and knowingly aiding or abetting any such disobedience or non-compliance shall incur a penalty of not less than \$20 or more than \$200, recoverable under *The Summary Convictions Act*.

Rev. Stat.
c. 121.

No prosecu-
tion without
leave of
Board.

(8) No prosecution for any penalty under this section shall be instituted without the authority of the Board. R.S.O. 1914, c. 185, s. 176.

TOLLS.

By-laws as to.

177.—(1) The company or the directors of the company by by-law, or any officer of the company thereunto authorized by by-law of the company or directors, may from time to time prepare and issue tariffs of the tolls to be charged in respect of the railway owned or operated by the company, and may specify the persons to whom, the place where, and the manner in which such tolls shall be paid.

By-laws
authorizing
tariffs of
tolls.

(2) The tolls may be either for the whole or any particular portion of the railway.

For whole
or part.

(3) All such by-laws and tariffs shall be submitted to the Board for approval.

Approval by
Board.

(4) The Board may approve such by-laws and tariffs in whole or in part, or may change, alter or vary any of the provisions therein.

In whole
or in part
or as varied.

(5) No tolls shall be charged by the company or by any person in respect of a railway or any traffic thereon until a by-law authorizing the preparation and issue of tariffs of such tolls has been approved by the Board, nor, unless otherwise authorized by this Act, until a tariff of such tolls has been filed with, and, where such approval is required under this Act, approved by the Board; nor shall any tolls be charged under any tariff or portion thereof disallowed by the Board; nor shall the company charge, levy or collect any toll or money for any service as a common carrier, except under the provisions of this Act.

No tolls to
be charged
until by-law
approved by
Board.

(6) The Board may, with respect to any tariff of tolls other than the passenger and freight tariffs in this Act hereinafter mentioned, make regulations fixing and determining the time when, the place where, and the manner in which the tariff shall be filed, published and kept open for public inspection. R.S.O. 1914, c. 185, s. 177.

Regulations
of Board
as to pub-
lication of
tariffs.

Express Tolls.

178.—(1) All express tolls shall be subject to the approval of the Board.

Approval of
express tolls.

(2) The Board may disallow any express tariff or any portion thereof which it considers unjust or unreasonable and shall have and may exercise all the powers with respect to express tolls and such tariffs as it has or may exercise under this Act with respect to freight tolls and freight tariffs; and all the provisions of this Act relating to freight tolls and freight tariffs, in so far as such provisions are applicable and not inconsistent with the provisions of this section and the five next following sections, shall apply to express tolls and tariffs. R.S.O. 1914, c. 185, s. 178.

Disallowance
of express
tolls.

Tariff of
express
tolls.

179. Tariffs of such express tolls shall be filed with the Board and shall be in such form, size and style and give such information, particulars and details as the Board, from time to time, by regulation or by order in any particular case prescribes. R.S.O. 1914, c. 185, s. 179.

Goods not
to be carried
by express
unless tariff
in force.

180. No company shall carry or transport any goods by express, unless and until the tariff of express tolls therefor or in connection therewith has been submitted to and filed with the Board in the manner hereinbefore provided; or, in the case of competitive tariffs, unless such tariffs are filed in accordance with the rules and regulations of the Board made in relation thereto, or in any case where the express toll applicable to such carriage or transport has been disallowed by the Board. R.S.O. 1914, c. 185, s. 180.

And tolls
not to be
charged in
such case.

181. No express toll shall be charged in respect of which there is default in such filing, or which is disallowed by the Board. R.S.O. 1914, c. 185, s. 181.

Board may
define
carriage by
express.

182. The Board may, by regulation prescribe or in any particular case, determine what is carriage or transportation of goods by express, or whether goods are carried or transported by express within the meaning of this Act. R.S.O. 1914, c. 185, s. 182.

Conditions
limiting
liability to
be approved
by Board.

183.—(1) No contract, condition, by-law, regulation, declaration or notice made or given by any company or any person or corporation charging express tolls impairing, restricting or limiting the liability of such company, person or corporation with respect to the collecting, receiving, caring for or handling of any goods for the purpose of sending, carrying or transporting them by express, or for or in connection with the sending, carrying, transporting or delivery by express of any goods, shall have any force or effect unless first approved by order or regulation of the Board.

Regulation
of carriage
by express.

(2) The Board may in any case or by regulation

(a) determine the extent to which the liability of such company, person or corporation may be so impaired, restricted or limited; and

(b) prescribe the terms and conditions under which goods may be collected, received, cared for or handled for the purpose of sending, carrying or transporting them by express, or under which goods may be sent, carried, transported or delivered by express by any such company, person or corporation. R.S.O. 1914, c. 185, s. 183.

Annual
return by
company.

184.—(1) Every company and every person and corporation charging express tolls shall make to the Board an annual return of its capital, business and working expenditure, and such other information and particulars, including a statement of unclaimed goods.

(2) Such return shall be made in such form, covering such period, and at such time, and shall be published in such manner as the Board from time to time directs. Form, etc., of return. R.S.O. 1914, c. 185, s. 184.

185. Every company which carries or transports, and every officer or employee thereof who directs or knowingly permits to be carried or transported, any goods by express, Carrying by express without filing tariff, etc.

(a) unless and until the tariff of express tolls therefor or in connection therewith has been submitted to and filed with the Board in the manner required by this Act; or,

(b) in the case of competitive tariffs, unless such tariffs are filed in accordance with the rules and regulations of the Board made in relation thereto; or,

(c) in any case where the express toll applicable to such carriage or transport has been disallowed by the Board,

shall be liable to a penalty not exceeding \$100 for each such offence. Penalty. R.S.O. 1914, c. 185, s. 185.

Collection of Tolls.

186.—(1) If the company pays the charges to which any goods which come into its possession are subject the company shall have the same lien for the amount thereof upon such goods as the person to whom such charges were originally due, and shall be subrogated in respect of such charges to his rights and remedies. Collecting back charges on goods.

(2) In case of refusal or neglect of payment on demand of any charges or any lawful tolls, or any part thereof, the same shall be recoverable in any court of competent jurisdiction. Proceedings for recovery.

(3) The company may, instead of proceeding by action for the recovery of such tolls, seize the goods for or in respect whereof such tolls are payable, and may detain the same until payment thereof, and in the meantime such goods shall be at the risk of the owners thereof. Seizure and detention of goods.

(4) If the tolls are not paid within six weeks, and where the goods are perishable goods, if the tolls are not paid upon demand or if such goods are liable to perish while in the possession of the company by reason of delay in payment or taking delivery by the consignee, the company may advertise and sell the whole or any part of such goods, and out of the money arising from such sale retain the tolls payable and all reasonable charges and expenses of such seizure, detention and sale. Sale of goods to recover tolls.

Surplus,
applica-
tion of.

(5) The company shall pay or deliver the surplus, if any, or such of the goods as remain unsold to the person entitled thereto.

Unclaimed
goods.

(6) If any goods remain in the possession of the company unclaimed for the space of twelve months the company may thereafter, and on giving public notice thereof by advertisement for six weeks in the *Ontario Gazette* and in such newspapers as it deems necessary, sell such goods by public auction at a time and place which shall be mentioned in such advertisement, and out of the proceeds thereof pay such tolls and all reasonable charges for storing, advertising and selling such goods.

Payment
of balance.

(7) The balance of the proceeds, if any, shall be kept by the company for a further period of three months to be paid over to any person entitled thereto.

When
Province
entitled.

(8) In default of such balance being claimed before the expiration of the period last aforesaid the same shall be paid over to the Treasurer of Ontario to be applied to the general purposes of the Province.

Discrimina-
tion pro-
hibited.

(9) Such balance may be claimed by the person entitled thereto within six years of the date of such payment. R.S.O. 1914, c. 185, s. 186.

Equality.

Limitation
of claims.

187.—(1) All such tolls shall always, under substantially similar circumstances and conditions in respect of all traffic of the same description and carried in or upon a like kind of cars passing over the same portion of the line or railway, be charged equally to all persons and at the same rate, whether by weight, mileage or otherwise.

Idem.

(2) No reduction or advance in any such tolls shall be made, either directly or indirectly, in favour of or against any particular person or company travelling upon or using the railway.

Proportion-
ate decrease
in tolls in
certain
cases.

(3) The tolls for larger quantities, greater numbers or longer distances may be proportionately less than the tolls for smaller quantities or numbers, or shorter distances, if such tolls are, under substantially similar circumstances, charged equally to all persons.

Special
rates for
perishable
goods.

(4) The company may make uniform special rates for the carriage of fruit, milk and other perishable products and commodities.

Unjust dis-
crimination.

(5) No toll shall be charged which unjustly discriminates between different localities.

(6) The Board shall not approve or allow any toll which, for the like description of goods or for passengers carried under substantially similar circumstances and conditions in the same direction over the same line, is greater for a shorter than for a longer distance, within which such shorter distance is included, unless the Board is satisfied that, owing to competition, it is expedient to allow such toll. Long and short haul clause.

(7) The Board may declare that any places are competitive points within the meaning of this Act. Competitive points.

(8) No company shall, without leave therefor having been obtained from the Board, except in accordance with the provisions of this Act, directly or indirectly, pool its freights or tolls with the freights or tolls of any other railway company or common carrier, or divide its earnings or any portion thereof with any other railway company or common carrier, or enter into any contract, arrangement, agreement, or combination to effect, or which may effect, any such result. R.S.O. 1914, c. 185, s. 187. Pooling prohibited.

Freight Classification and Tariffs.

188.—(1) The tariff of tolls for freight traffic shall be subject to and governed by that classification which the Board may prescribe or authorize, and the Board shall endeavour to have such classification uniform throughout Ontario as far as may be, having due regard to all proper interests. Tariff of tolls subject to classification by Board.

(2) The Board may make any special regulations, terms and conditions in connection with such classification, and as to the carriage of any particular commodity or commodities mentioned therein, as to it may seem expedient. Special terms and conditions.

(3) The company may, from time to time, with the approval of the Board, and shall, when so directed by the Board, place any goods specified by the Board in any stated class, or remove them from any one class to any other higher or lower class; but no goods shall be removed from a lower to a higher class until such notice as the Board determines has been given in the *Ontario Gazette*. R.S.O. 1914, c. 185, s. 188. Changes of class.

189. All tariff by-laws and tariffs of tolls shall be in such form, size and style, and give such information, particulars and details as the Board may, by regulation or in any case, prescribe. R.S.O. 1914, c. 185, s. 189. Form and particulars.

190.—(1) The Board may disallow any tariff or any portion thereof which it considers to be unjust or unreasonable, or contrary to any of the provisions of this Act, and may require the company, within a prescribed time, to substitute a tariff satisfactory to the Board in lieu thereof, or may prescribe other tolls in lieu of the tolls so disallowed. Disallowance. Substitution.

Commence-
ment.

(2) The Board may designate the date at which any tariff shall come into force.

Amendment.

(3) Any tariff in force, except standard tariffs hereinafter mentioned, may, subject to disallowance or change by the Board, be amended or supplemented by the company by tariffs in accordance with the provisions of this Act.

Consolidat-
ion and
re-issue.

(4) When any tariff has been amended or supplemented from time to time the Board may order that a consolidation and reissue of such tariff be made by the company. R.S.O. 1914, c. 185, s. 190.

Fraction of
a mile.

191.—(1) In all cases a fraction of a mile in the distance over which traffic is carried on the railway shall be considered as a whole mile.

Fraction of
five pounds
in weight.

(2) In estimating the weight of any goods in any one single shipment on which the toll amounts to more than the minimum, or "smalls" toll, any fraction of five pounds shall be waived by the company, and five or any fraction above five and up to ten pounds shall be deemed ten pounds.

Fraction of
five cents.

(3) In estimating the tolls to be charged in passenger tariffs any fraction of five cents less than two and a half cents shall be waived by the company, and above two and a half cents and up to five cents shall be considered as five cents. R.S.O. 1914, c. 185, s. 191.

Division of
freight
tariffs.

192. The tariffs of tolls which the company shall be authorized to issue under this Act for the carriage of goods between points on the railway shall be divided into three classes, namely:

Standard.

(a) The standard freight tariff;

Special.

(b) Special freight tariffs; and

Competitive.

(c) Competitive tariffs. R.S.O. 1914, c. 185, s. 192.

What
standard
freight
tariff to
specify.

193.—(1) The standard freight tariff or tariffs, where the company is allowed by the Board more than one standard freight tariff, shall specify the maximum mileage tolls to be charged for each class of the freight classification for all distances covered by the company's railway.

Distances.

(2) Such distances may be expressed in blocks or groups, and such blocks or groups may include relatively greater distances for the longer than for the shorter hauls.

What special
freight
tariffs to
specify.

(3) The special freight tariffs shall specify the toll or tolls, lower than in the standard freight tariff, to be charged by the company for any particular commodity or commodities, or for each or any class or classes of the freight classification, or to or from a certain point or points on the railway; and greater tolls shall not be charged therein for a shorter than

for a longer distance over the same line in the same direction, if such shorter distance is included in the longer.

(4) The competitive tariffs shall specify the toll or tolls, lower than in the standard freight tariff, to be charged by the company for any class or classes of the freight classification, or for any commodity or commodities, to or from any specified point or points which the Board may deem or have declared to be competitive points not subject to the long and short haul clause under the provisions of this Act. R.S.O. 1914, c. 185, s. 193.

194.—(1) Every standard freight tariff shall be filed with the Board and shall be subject to the approval of the Board.

What competitive tariffs to specify.

Standard freight tariff.

(2) Upon any such tariff being filed and approved by the Board the company shall publish the same, with a notice of such approval, in such form as the Board directs in at least two consecutive weekly issues of the *Ontario Gazette*.

Filing.

Approval.

Publication.

(3) When the provisions of this section have been complied with the tolls as specified in the standard freight tariff or tariffs, as the case may be, shall, except in the cases of special freight and competitive tariffs, be the only tolls which the company is authorized to charge for the carriage of goods.

Tolls specified to be the only lawful tolls.

(4) Until the provisions of this section have been complied with no toll for the carriage or transport of goods shall be charged by the company. R.S.O. 1914, c. 185, s. 194.

No toll until compliance.

195.—(1) All special freight tariffs shall be filed by the company with the Board, and every such tariff shall specify the date of the issue thereof and the date on which it is intended to take effect.

Special freight tariffs.

(2) When any such special freight tariff reduces any toll previously authorized to be charged under this Act, the company shall, for three days previous to the date on which such tariff is intended to take effect, deposit and keep on file in a convenient place, open for the inspection of the public during office hours, a copy of such tariff, at every station or office of the company where freight is received, or to which freight is to be carried thereunder, and also post up in a prominent place, at each such office or station, a notice in large type directing public attention to the place in such office or station where such tariff is so kept on file, but the Board may, by regulation or otherwise, determine and prescribe any other or additional method of publication of the tariff during such period.

If tolls previously in force are reduced.

Notice.

(3) When any such special freight tariff advances any toll previously authorized to be charged under this Act the company shall in like manner file and publish such tariff thirty days previously to the date on which such tariff is intended to take effect.

If previous tolls advanced.

Effect of
filing.

(4) Upon any such special freight tariff being so filed and published the company shall, until such tariff is superseded or is disallowed by the Board, charge the toll or tolls as specified therein; and such special freight tariff shall supersede any preceding tariff or tariffs, or any portion or portions thereof, so far as it reduces or advances the tolls therein. R.S.O. 1914, c. 185, s. 195.

Competitive
tariffs.

196.—(1) Competitive tariffs shall be filed by the company with the Board, and every such tariff shall specify the date of the issue thereof and the date on which it is intended to take effect.

Filing.

(2) Where it may be necessary to meet the exigencies of competition, or as the Board may deem expedient, the Board may make rules and regulations governing the filing or publication of such tariffs, and may provide that any such tariffs may be acted upon and put in operation immediately upon the issue thereof by the company before they have been filed with the Board. R.S.O. 1914, c. 185, s. 196.

Division of
passenger
tariffs.

197.—(1) The tariffs of tolls which the company shall be authorized to issue under this Act for the carriage of passengers between points on the railway shall be divided into two classes, namely:

Standard.

(a) The standard passenger tariff; and,

Special.

(b) Special passenger tariffs.

What
standard
passenger
tariff shall
specify.

(2) The standard passenger tariff shall specify the maximum mileage tolls to be charged for passengers for all distances covered by the company's railway, and such distances may be expressed in like manner as provided herein in respect of standard freight tariffs.

What special
passenger
tariffs shall
specify.

(3) Special passenger tariffs shall specify the toll or tolls to be charged by the company for passengers, in every case where such tolls are lower than the tolls specified in the company's standard passenger tariff. R.S.O. 1914, c. 185, s. 197.

Standard
passenger
tariff.

198.—(1) A standard passenger tariff shall be filed, approved and published in the same manner as required by this Act in the case of a standard freight tariff.

No toll
until com-
pliance.

(2) Until the company files its standard passenger tariff and such tariff is so approved and published in the *Ontario Gazette* no tolls for the carriage of passengers shall be charged by the company.

Tolls
authorized.

(3) When the provisions of this section have been complied with the tolls in the standard passenger tariff shall, except in the case of special passenger tariffs, be the only tolls which the company is authorized to charge for the carriage of passengers. R.S.O. 1914, c. 185, s. 198.

199.—(1) The company shall file all special passenger tariffs with the Board and shall, for three days previous to the date on which any such tariff is intended to take effect, deposit and keep on file in a convenient place, open for the inspection of the public during office hours, a copy of each such tariff at every station or office of the company where passengers are received for carriage thereunder, and also post up in a prominent place at each such office or station a notice in large type directing public attention to the place in such office or station where such tariff is so kept on file, but the Board may, owing to the exigencies of competition or otherwise, notwithstanding anything in this section, determine the time or manner within and according to which publication of any such tariff is to be made.

Special
passenger
tariffs.

Notice.

(2) The date of the issue and the date on which, and the period, if any, during which any such tariff is intended to take effect shall be specified therein.

Date and
period.

(3) Upon any such tariff being so duly filed the company shall, until such tariff is superseded or is disallowed by the Board, charge the toll or tolls as specified therein, and such tariff shall supersede any preceding tariff or tariffs, or any portion or portions thereof, in so far as it reduces or advances the tolls therein.

Effect of
filing.

(4) Until such tariff is so duly filed no such toll or tolls shall be charged by the company. R.S.O. 1914, c. 185, s. 199.

No toll
before filing.

200.—(1) Where traffic is to pass over any continuous route in Ontario operated by two or more companies the companies may agree upon a joint tariff for such continuous route, and the initial company shall file such joint tariff with the Board, and the other company or companies shall promptly notify the Board of its or their assent to and concurrence in such joint tariff.

Joint tariffs
may be
agreed upon.

(2) The names of the companies whose lines compose such continuous route shall be shown by such tariffs.

Names of
companies.

(3) If the company owns, charters, uses, maintains or works, or is a party to any arrangement for using, maintaining or working vessels for carrying traffic by water between any places or ports in Ontario, and if any such vessel carries traffic between a port in Ontario reached by such company and a port in Ontario reached by the railway of another company, the vessel and the railway of either company shall be deemed to constitute a continuous route in Ontario within the meaning of this section. R.S.O. 1914, c. 185, s. 200.

Continuous
route in the
case of
carriage by
water.

201.—(1) In the event of failure by such companies to agree upon any such joint tariff as provided in the last preceding section, the Board, on the application of any company or person desiring to forward traffic over any such continuous

Where
failure to
agree.

Board may require. route, which the Board considers a reasonable and practicable route, or any portion thereof, may require such companies, within a prescribed time, to agree upon and file in like manner a joint tariff for such continuous route, satisfactory to the Board, or may, by order, determine the route, fix the toll or tolls and apportion the same among the companies interested, and may determine the date when the toll or tolls so fixed shall come into effect.

Companies to comply. (2) Upon any such order being made the companies shall, as soon as possible, or within such time as the Board may require, file and publish a joint tariff in accordance with this Act and in accordance with such order.

Apportionment of through rate. (3) In any case where there is a dispute between the companies interested as to the apportionment of a through rate in any joint tariff the Board may apportion such rate between such companies.

Power of Board. (4) The Board may decide that any proposed through rate is just and reasonable, notwithstanding that a less amount may be allotted to any company out of such through rate than the toll such company would otherwise be entitled to charge. R.S.O. 1914, c. 185, s. 201.

Continuous carriage. **202.**—(1) No company shall, by any combination, contract or agreement, express or implied, or by other means or devices, prevent the carriage of goods from being continuous from the place of shipment to the place of destination.

Break in bulk, etc. (2) No break in bulk, stoppage or interruption made by such company shall prevent the carriage of goods from being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage, or to evade any of the provisions of this Act. R.S.O. 1914, c. 185, s. 202.

Filing and publication of joint tariffs. **203.**—(1) Joint tariffs shall, as to the filing and publication thereof, be subject to the same provisions in this Act as are applicable to the filing and publication of local tariffs of a similar description; and, upon any such joint tariff being so duly filed with the Board, the company or companies shall, until such tariff is superseded or disallowed by the Board, charge the toll or tolls as specified therein; but the Board may except from the provisions of this section the filing and publication of any or all passenger tariffs of foreign railway companies.

Information which Board may require. (2) The Board may require to be informed by the company of the proportion of the toll or tolls, in any joint tariff filed, which it or any other company is to receive or has received. R.S.O. 1914, c. 185, s. 203.

204.—(1) The company shall deposit and keep on file in a convenient place, open for the inspection of the public during office hours, a copy of each of its tariffs at the following places respectively, Where tariffs may be inspected.

- (a) standard passenger and freight tariffs at every station or office of the company where passengers or freight respectively are received for carriage thereunder; Standard tariffs.
- (b) special passenger and freight tariffs at every station or office of the company where passengers or freight respectively are received for carriage thereunder, and, as to such freight tariffs, as soon as possible, at each of its stations or offices to which freight traffic is to be carried thereunder; Special tariffs.
- (c) competitive tariffs, at each freight station or office of the company where goods are to be received and delivered thereunder; Competitive tariffs.
- (d) joint tariffs for traffic passing over any continuous route in Ontario, operated by two or more companies, at each freight station or office where traffic is to be received, and at each freight station to which such tariffs extend. Joint tariffs.

(2) The company shall keep on file at its stations or offices, where freight is received and delivered, a copy of the freight classification, or classifications, in force upon the railway for inspection during business hours. Freight classifications.

(3) The company shall post up in a prominent place at each of its stations where passengers or freight, respectively, are received for carriage a notice in large type directing the public attention to the place in such station where the passenger or freight tariffs, respectively, are kept on file for public inspection during business hours, and the station agent or person in charge at such station shall produce to any applicant, on request, any particular tariff in use at that station which he may desire to inspect. Notice to be posted at station or place where tariffs open to inspection.

(4) Notwithstanding anything in this section, the Board may, in addition to or in substitution for the publication of any tariff required by this section, by regulation or otherwise, determine and prescribe the manner and form in which any such tariff shall be published or kept open by the company for public inspection. R.S.O. 1914, c. 185, s. 204. Power of Board as to publication of tariffs.

205. If any company or any director or officer thereof, or any receiver, trustee, lessee, agent or person, acting for or employed by such company, either alone or with any other company or person Contravention of orders, etc.

- (a) wilfully does or causes to be done, or willingly suffers to be done, any act, matter or thing, contrary to any order, direction, decision or regulation of the Board made or given under this Act, in respect of tolls; or
- (b) wilfully omits or fails to do any act, matter or thing hereby required to be done; or
- (c) causes or willingly suffers or permits any act, matter or thing, so directed or required to be done, not to be so done; or
- (d) contravenes any such order, direction, decision or regulation or any of the provisions of this Act, in respect of tolls,

Penalty. such company, director, officer, receiver, trustee, lessee, agent or person shall for each such offence incur a penalty of not less than \$100 nor more than \$1,000. R.S.O. 1914, c. 185, s. 205.

False billing, etc.

206. Any company or any officer or agent thereof, or any person acting for or employed by such company, who, by means of false billing, false classification, false report of weight, or by any other device or means, knowingly, wilfully or willingly suffers or permits any person or persons to obtain transportation for goods at less than the required tolls then authorized and in force on the railway of the company shall, for each offence, incur a penalty of not less than \$100 nor more than \$1,000. R.S.O. 1914, c. 185, s. 206.

Penalty.

Idem.

207.—(1) Any person, or any officer or agent or any incorporated company, who shall deliver goods for transportation to such company, or for whom as consignor or consignee the company shall transport goods, who knowingly or wilfully, by false billing, false classification, false weighing, false representation of the contents of the package, or false report of weight, or by any other device or means, whether with or without the consent or connivance of the company, its agent or agents, obtains transportation for such goods at less than the regular tolls then authorized and in force on the railway shall, for each offence, incur a penalty of not less than \$100 nor more than \$1,000.

Penalty.

Further toll.

(2) The Board may make regulations providing that any such person or company shall, in addition to the regular toll, be liable to pay to the company a further toll not exceeding fifty per centum of the regular charge.

Opening of packages.

(3) The company may, and when ordered by the Board shall, open and examine any package, box, case or shipment, for the purpose of ascertaining whether this section has been violated. R.S.O. 1914, c. 185, s. 207.

208. Any person or company, or any officer or agent of any company, Unjust discrimination.

- (a) who offers, grants, or gives, or solicits, accepts or receives any rebate, concession, or discrimination in respect of the transportation of any traffic by the company, whereby any such traffic is, by any device whatsoever, transported at a less rate than that named in the tariffs then in force; or
- (b) for whom the company or any of its officers or agents is by any such means induced to transport traffic, and thereby to discriminate unjustly in favour of any such person, company, officer or agent as against any other person or company; or,
- (c) who aids or abets the company in any unjust discrimination,

shall for each offence incur a penalty of not less than \$100 Penalty. nor more than \$1,000. R.S.O. 1914, c. 185, s. 208.

209. If the company files with the Board any tariff and such tariff comes into force and is not disallowed by the Board under this Act, or if the company participates in any such tariff, any departure from the tolls in such tariff, while so in force, shall, on the part of such company, its officers, agents or employees, be an offence under this Act. Departure from tolls in tariff. R.S.O. 1914, c. 185, s. 209.

Passenger Fares on Electric Roads.

210.—(1) Notwithstanding anything to the contrary contained in any agreement with a municipal or other corporation or person or in any special Act, Limit of fares on electric railways.

- (a) the fare to be taken by a company on a railway Generally. operated by electricity for each passenger shall not exceed five cents for any distance not exceeding three miles, and where the distance exceeds three miles shall not exceed two cents per mile or fraction thereof for the distance actually travelled; and in the case of children under ten years of age shall not exceed three cents for three miles or less, and where the distance exceeds three miles shall not exceed one cent per mile or fraction thereof for the distance actually travelled, but children in arms shall in all cases be carried free;
- (b) pupils under seventeen years of age actually attending school shall be entitled to purchase at any office of the company where tickets are sold on a certificate from their principal teacher that they are *bona fide* pupils attending school eight tickets Pupils' tickets.

for twenty-five cents, such ticket to be used only between the hours of eight o'clock and half-past nine in the forenoon, and between half-past three and five o'clock in the afternoon, and then only for the purpose of attending and returning from school, but no such ticket shall entitle any pupil to ride a greater distance than five miles. R.S.O. 1914, c. 185, s. 210 (1).

Certain agreements not affected.

(2) This section shall not alter or vary any agreement by which the company is bound to charge a lower rate of fares for passengers than those mentioned in this section, or to supply a greater number of tickets to pupils attending school or to pupils of a greater age or at different hours or for a greater distance than mentioned in this section. R.S.O. 1914, c. 185, s. 210 (2); 1918, c. 30, s. 2.

Exception of companies operating in provincial parks.

(3) This section shall not apply to a company whose tariff for passenger fares is subject to the approval of any commissioners in whom are vested any park or land owned by the Crown for the use of the public. R.S.O. 1914, c. 185, s. 210 (3).

Traffic Facilities.

Facilities for traffic

211.—(1) All companies shall, according to their respective powers, afford to all persons and companies all reasonable and proper facilities for the receiving, forwarding and delivering of traffic upon and from their several railways, for the interchange of traffic between their respective railways, and for the return of rolling stock.

Including through traffic.

(2) Such facilities to be so afforded shall include the due and reasonable receiving, forwarding and delivering by the company, at the request of any other company, of through traffic, and, in the case of goods shipped by car load, of the car with the goods shipped therein, to and from the railway of such other company, at a through rate; and also the due and reasonable receiving, forwarding and delivering by the company, at the request of any person interested in through traffic, of such traffic at through rates.

(3) No company shall

No undue preference.

(a) make or give any undue or unreasonable preference or advantage to, or in favour of, any particular person or company, or any particular description of traffic, in any respect whatsoever;

Or discrimination.

(b) by any unreasonable delay or otherwise howsoever make any difference in treatment in the receiving, loading, forwarding, unloading or delivery of goods of a similar character in favour of or against any particular person or company;

(c) subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage, in any respect whatsoever; or

Or disadvantage.

(d) so distribute or allot its freight cars as to discriminate unjustly against any locality or industry, or against any traffic which may originate on its railway destined to a point on another railway in Ontario with which it connects.

Allotment of freight cars.

(4) Every company which has or works a railway forming part of a continuous line of railway with or which intersects any other railway, or which has any terminus, station or wharf near to any terminus, station or wharf of any other railway, shall afford all due and reasonable facilities for delivering to such other railway, or for receiving from and forwarding by its railway, all the traffic arriving by such other railway without any unreasonable delay, and without any such preference or advantage, or prejudice or disadvantage as aforesaid, and so that no obstruction is offered to the public desirous of using such railways as a continuous line of communication, and so that all reasonable accommodation, by means of the railways of the several companies, is, at all times, afforded to the public in that behalf.

Connecting railway to afford reasonable facilities.

(5) The reasonable facilities which every railway company is required to afford under this section shall include reasonable facilities for the junction of private sidings or private branch railways with any railway belonging to or worked by any such company, and reasonable facilities for receiving, forwarding and delivering traffic upon and from those sidings or private branch railways.

Including facilities for junction of private sidings, branches, etc.

(6) Every company which grants any facilities for the carriage of goods by express to any incorporated express company or person shall grant equal facilities, on equal terms and conditions, to any other incorporated express company which demands the same.

Equal facilities in case of express companies.

(7) Any agreement made between any two or more companies contrary to this section shall be unlawful and null and void. R.S.O. 1914, c. 185, s. 211.

Agreements to the contrary void.

212.—(1) Where two or more electric street railway or radial railway systems, or a street railway system and a radial railway system owned or operated by the same or by different corporations, lie contiguous to one another each corporation shall afford to the other or others all reasonable facilities for the interchange of traffic and running rights over its lines.

Interchange of traffic between contiguous, street or radial lines.

(2) The nature or extent of the facilities and running rights to be afforded, and the terms and conditions upon which they shall be exercised, shall be determined by the

Powers of Board.

Board, and it shall be the duty of each corporation to conform to and obey any order of the Board made in the premises.

When exercised.

(3) The order may be made on the application of any or either of the corporations or of a municipal corporation or person interested or of the Board's own motion.

Varying order.

(4) The Board may from time to time vary the terms of any order made under the preceding subsections as it may deem just.

Exercising powers where system not complete.

(5) The powers conferred on the Board may be exercised in respect of an electric street railway system which a corporation has authority to construct, the location and plans of which have been approved by the Board, notwithstanding that no part or that part only of the system has been constructed, and such powers may also be exercised notwithstanding that a corporation has the exclusive right to build and operate surface railways within the municipality or any part of it.

Or right is exclusive.

Interpretation. "Corporation."

(6) In this section "corporation" and "corporations" shall include a municipal corporation.

Extent of powers of Board.

(7) For the purposes of this section the Board shall have all the powers conferred by section 130.

Commencement section.

(8) This section shall not come into force until a day to be named by the Lieutenant-Governor by Proclamation. R.S.O. 1914, c. 185, s. 212.

Burden of proof respecting unjust discrimination, etc.

213.—(1) Whenever it is shown that any company charges one person, company, or class of persons, or the persons in any locality, lower tolls for the same or similar goods, or lower tolls for the same or similar services, than it charges to other persons, companies, or classes of persons, or to the persons in another locality, or makes any difference in treatment in respect of such companies or persons, the burden of proving that such lower toll, or difference in treatment, does not amount to an undue preference or an unjust discrimination shall lie on the company.

What Board may consider in determining unjust discrimination, etc.

(2) In deciding whether a lower toll, or difference in treatment, does or does not amount to an undue preference or an unjust discrimination, the Board may consider whether such lower toll, or difference in treatment, is necessary for the purpose of securing in the interest of the public the traffic in respect of which it is made, and whether such object cannot be attained without unduly reducing the higher tolls.

Apportionment of toll for carriage by land and water.

(3) In any case in which the toll charged by the company for carriage, partly by rail and partly by water, is expressed in a single sum, the Board, for the purpose of determining whether a toll charged is discriminatory or contrary in any way to the provisions of this Act, may require the company

to declare forthwith to the Board, or may determine what portion of such single sum is charged in respect of the carriage by rail. R.S.O. 1914, c. 185, s. 213.

214.—(1) The Board may determine, as questions of fact, whether or not traffic is or has been carried under substantially similar circumstances and conditions, and whether there has, in any case, been unjust discrimination, or undue or unreasonable preference or advantage, or prejudice or disadvantage, within the meaning of this Act, or whether in any case the company has, or has not, complied with the provisions of sections 187 and 211.

Power of Board to determine what are substantially similar circumstances, undue preferences, etc.

(2) The Board may by regulation declare what shall constitute substantially similar circumstances and conditions, or unjust or unreasonable preferences, advantages, prejudices, or disadvantages within the meaning of this Act, or what shall constitute compliance or non-compliance with the provisions of such sections.

Power to make regulations in that behalf.

(3) For the purposes of section 212 the Board may order that specific works be constructed or carried out, or that property be acquired, or that specified tolls be charged, or that cars, motive power or other equipment be allotted, distributed, used or moved as specified by the Board, or that any specified steps, systems, or methods be taken or followed by any particular company or companies, or by railway companies generally. R.S.O. 1914, c. 185, s. 214.

Power to order specific works.

215. If the company files with the Board any tariff and such tariff comes into force and is not disallowed by the Board under this Act, or if the company participates in any such tariff, the tolls under such tariff while so in force shall, in any prosecution under this Act, as against such company, its officers, agents or employees, be conclusively deemed to be the lawful tolls chargeable by such company. R.S.O. 1914, c. 185, s. 215.

Effect of tariff when filed.

Presumption against company.

General Provisions Respecting Carriage.

216.—(1) No contract, condition, by-law, regulation, declaration or notice, made or given by the company, impairing, restricting, or limiting its liability in respect of the carriage of any traffic, shall, except as hereinafter provided, relieve the company from such liability, unless such class of contract, condition, by-law, regulation, declaration or notice shall have been first authorized or approved by order or regulation of the Board.

Effect of contracts, etc., impairing carriers' liability.

(2) The Board may, in any case or by regulation, determine the extent to which the liability of the company may be so impaired, restricted or limited.

Power of Board.

Terms
may be
prescribed.

(3) The Board may, by regulation, prescribe the terms and conditions under which any traffic may be carried by the company. R.S.O. 1914, c. 185, s. 216.

217. Nothing in this Act shall be construed to prevent

Permission
for free or
reduced
traffic for
Government
and chari-
table pur-
poses, etc.

(a) the carriage, storage or handling of traffic, free or at reduced rates, for the Dominion, or for any provincial or municipal government, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the carriage, free or at reduced rates, of destitute or homeless persons, transported by charitable societies, and the necessary agencies employed in such transportation;

Excursion-
ists, immi-
grants, etc.

(b) the issuing of mileage, excursion or commutation passenger tickets, or the carriage at reduced rates of immigrants or settlers and their goods or effects, or any member of any organized association of commercial travellers with his baggage;

Officers,
employees,
members of
Parliament,
the press,
Interstate
Commerce
Commission.

(c) railways from giving free carriage or reduced rates to their own officers or employees, or their families, or to former employees of any railway, or for their goods and effects, or to members of the Senate and House of Commons of Canada or of the press, or to members of the Interstate Commerce Commission of the United States and the officers and staff of such commission, and for their baggage and equipment, or to such other persons as the Board may approve or permit;

Passes.

(d) the principal officers of any railway, or any railway or transportation company, from exchanging passes or free tickets with other railways, or railway or transportation companies, for their officers and employees and their families, or their goods and effects;

Power of
Board to
regulate
such traffic.

Provided that the carriage of traffic by the company under this section may, in any particular case, or by general regulation, be extended, restricted, limited or qualified by the Board. R.S.O. 1914, c. 185, s. 217.

When special
rates allowed.

218.—(1) Notwithstanding anything in this Act the Board may make regulations permitting the company to issue special rate notices prescribing tolls lower than the tolls in force upon the railway to be charged for specific shipments between points upon the railway, not being competitive points, if it considers that the charging of the special tolls mentioned in any such notices will help to create trade, or develop the business of the company, or be in the public interest, and not otherwise contrary to the provisions of this Act.

Notice to
be filed
with Board.

(2) Every such special rate notice, or a duplicate copy thereof shall be filed with the Board, and shall exist merely

for the purpose of giving effect to the special rate charged for the specific shipment mentioned therein. R.S.O. 1914, c. 185, s. 218.

219. The company shall furnish free transportation upon any of its trains for members of the Assembly, with their baggage, and for the members of the Board, and for such officers and staff of the Board as the Board may determine, with their baggage and equipment, and shall also, when required, haul free of charge any car provided for the use of the Board. R.S.O. 1914, c. 185, s. 219.

Members of
Legislature
and Board
to have free
transporta-
tion.

RAILWAY CONSTABLES.

220.—(1) Any two justices of the peace or a police magistrate, within whose jurisdiction the railway runs, may, on the application of the company or of any clerk or agent of the company, thereto authorized by the company, appoint any person, being a British subject, recommended for that purpose by such company, clerk or agent to act as a constable on and along such railway.

Constables
may be
appointed to
act on the
line of any
railway.

(2) Every person so appointed shall take and subscribe an oath to the effect following:

Oath of
office.

"I, A. B., having been appointed a constable to act upon and 'along (*here name the Railway*), under *The Railway Act*, do swear 'that I am a British subject by birth (or naturalization) and not 'a citizen or a subject of any foreign country, and that I will well 'and truly serve our Sovereign Lord the King, in the office of con- 'stable, without favour or affection, malice or ill-will, and that I 'will, to the best of my power, cause the peace to be kept, and 'prevent all offences against the peace, and that while I continue 'to hold such office, I will, to the best of my skill and knowledge, 'discharge the duties thereof faithfully, according to law: So help 'me God."

(3) Such appointment shall be made in writing signed by the official making the appointment, and the fact that the person appointed thereby has taken such oath shall be endorsed thereon by the person administering the same. R.S.O. 1914, c. 185, s. 220.

Appoint-
ment to be
in writing.

221.—(1) Every constable so appointed and having taken such oath may act as a constable for the preservation of the peace and for the security of persons and property against unlawful acts

Powers of
such con-
stables, and
to what
localities
they shall
extend.

(a) on such railway, and on any of the works belonging thereto;

(b) on and about any trains, roads, wharves, quays, landing-places, warehouses, land and premises belonging to the company, or in any place through which such railway passes, or in which the same terminates, or through or to which any railway passes which is worked or leased by such company, and

(c) in all places not more than one-quarter of a mile distant from such railway;

Power to
apprehend
offenders,
etc.

(2) Every such constable shall have all the powers, protection and privileges for the apprehending of offenders, as well by night as by day, and for doing all things for the prevention, discovery and prosecution of offences, and for keeping the peace, possessed by any constable duly appointed. R.S.O. 1914, c. 185, s. 221.

Duties of
such con-
stables.

222.—(1) Every such constable may take such persons as are charged with any offence against the provisions of this Act, or of any of the Acts or by-laws affecting the railway, before any justice or justices appointed for any county or district within which such railway passes.

Jurisdic-
tion of
justices.

(2) Every such justice may deal with all such cases as though the offence had been committed and the person taken within the limits of his jurisdiction. R.S.O. 1914, c. 185, s. 222.

Dismissal
by judge.

223.—(1) A judge of the county or district court of the county or district may dismiss any such constable who is acting within his jurisdiction.

By company.

(2) The company or any manager or superintendent thereof may dismiss any such constable who is acting on the railway.

Re-appoint-
ment.

(3) No person so dismissed shall be again appointed or act as a constable for such railway without the consent of the authority by which he was dismissed. R.S.O. 1914, c. 185, s. 223.

Record of
appointment
of con-
stables.

And of
dismissals.

224.—(1) The company shall, within one week after the date of the appointment or dismissal, as the case may be, of any constable appointed at the instance of the company, cause to be recorded in the office of the clerk of the peace for every county or district wherein the railway passes,—

- (a) such appointment or a certified copy thereof;
- (b) the name and designation of any such constable;
- (c) the date of the appointment;
- (d) the name of the authority making such appointment;
- (e) in the case of dismissal the fact of the dismissal of any such constable;
- (f) the date of any such dismissal; and
- (g) the name of the authority making such dismissal.

Effect as
evidence.

(2) A copy of such record shall be *prima facie* evidence of the due appointment of such constable or of his dismissal as the case may be.

(3) The clerk of the peace shall keep a record of all such facts in a book which shall be open to public inspection, and shall be entitled to a fee of fifty cents for each entry of appointment or dismissal, and twenty-five cents for each search or inspection, including the taking of extracts. R.S.O. 1914, c. 185, s. 224.

225. Every such constable who is guilty of any neglect or breach of duty in his office of constable shall incur a penalty not exceeding \$80, recoverable under *The Summary Convictions Act*. R.S.O. 1914, c. 185, s. 225.

Book for such records.
Neglect of duty by constable.
Penalty.
Rev. Stat. c. 121.

POWERS OF PASSENGER CONDUCTORS AS CONSTABLES.

226.—(1) The conductor of every train carrying passengers shall have all the powers of a constable while on duty on his train, and may wear a badge or other distinguishing mark of a special constable.

Conductors to have powers of constables.

(2) Every passenger who

(a) is guilty of disorderly conduct;

(b) uses any blasphemous or obscene language; or

(c) plays any game of cards of chance for money or any other thing of value,

Removal of passenger guilty of misconduct.

may, by the conductor of the train and the train servants of the company, be expelled from and put out of the train with his baggage at any usual stopping place or near any dwelling house as the conductor elects, but the conductor shall first stop the train and shall use no unnecessary force.

(3) The conductor may command the assistance of the employees of the company and of the passengers on such train to assist in such removal. R.S.O. 1914, c. 185, s. 226.

Assistance to conductor.

227. The company shall cause a notice to be placed in all passenger cars stating that the conductors have the authority and powers of constables. R.S.O. 1914, c. 185, s. 227.

Notice of authority of conductor.

STREET RAILWAYS AND RAILWAYS OPERATING ALONG HIGHWAYS.

General Provisions.

228. Unless otherwise provided, sections 229 to 265 shall apply only to street railways and street railway companies and to other railways incorporated for the purpose of operating partly or wholly along highways by electricity. R.S.O. 1914, c. 185, s. 228.

Limited application of ss. 229 to 265.

229. Every such company may, subject to the provisions of the special Act or of any agreement between the company and a municipal corporation, construct, maintain, complete

Powers of Company.

and operate and, from time to time, remove and change, as required, a double or single track railway, with the necessary switches, side tracks and turn-outs for the passage of cars, carriages and other vehicles adapted to the same, upon and along such of the highways in any municipality to which the special Act extends, as the council of the municipality may by by-law authorize, and over and upon land purchased or leased by the company for that purpose, and take, transport and carry passengers upon the same by the force or power of electricity, and construct and maintain all necessary works, buildings, appliances and conveniences connected therewith. R.S.O. 1914, c. 185, s. 229.

**Freight
traffic.**

230. The company may take, transport and convey goods upon its railway, but no freight or express cars shall be carried along any highway in any city, town or village over the railway unless and until the size and number of the cars and motors to be used therewith, and the hours of running the same, have been approved by the Board, nor shall any freight service be operated nor any class of freight carried on any such highway until authorized by, or except as directed by the Board. R.S.O. 1914, c. 185, s. 230.

**Agreements
between
municipality
and com-
pany as to
construc-
tion, street
repairs, etc.**

231. Subject to the provisions of section 260 the company and the council of any municipality in which a railway or part of a railway is proposed to be or is constructed may enter into agreements relating to:

- (a) the construction of the railway;
- (b) the time within which the railway shall be commenced, the manner of proceeding therewith, and the time of its completion;
- (c) the paving, macadamizing, repairing, grading and cleaning of the highways upon which the railway is proposed to be or is constructed;
- (d) the construction, opening and repairing of drains and sewers;
- (e) the laying, repairing or taking up of gas and water pipes in the highways;
- (f) the location of the railway, and the particular highways along which the same may be laid;
- (g) the pattern of rails;
- (h) the time and speed of running the cars, sleighs and other conveyances;
- (i) the fares to be charged within the maximum hereinbefore mentioned; and
- (j) the amount of compensation, if any, to be paid by the company annually or otherwise. R.S.O. 1914, c. 185, s. 231.

Municipal Street Railways.

232.—(1) The corporation of a city or town may construct, equip, maintain and operate street railways in, along and over such highways of the city or town, and subject to and upon such terms as the Board may approve; and may lease the same from time to time on such terms as may be determined on. R.S.O. 1914, c. 185, s. 232 (1); 1922, c. 67, s. 1.

Power to operate street railways.

(2) The powers conferred by this section shall not be exercised in respect of any highway or part of a highway in, along, or upon which a street railway company is entitled under an agreement with the corporation of the municipality to construct and operate its railway, so long as such right shall continue to exist, and any question or dispute as to whether a street railway company is so entitled shall be determined by the Board.

Not applicable where previous agreement with a company.

(3) In addition to the powers given and conferred by subsection 1 the corporation of a city or town operating or proposing to construct or operate a street railway within its own limits may construct, equip, maintain and operate any extension of any such street railway in any adjoining municipality with the consent of the corporation of such adjoining municipality by by-law, and upon such terms as the Board may approve.

Power to operate extension of street railway in adjoining municipality.

(4) A municipal corporation which constructs, owns or manages a street railway, including any extension in any adjoining municipality, shall have and exercise the same rights and powers and be subject to the same liabilities as street railways and companies under this Act, except where the same conflict or are inconsistent with or are repugnant to the rights, liabilities, powers and duties of a municipal corporation as provided by law.

Rights and liabilities of municipal corporation operating street railway.

(5) Nothing in this section shall relieve any municipal corporation from its obligations and liabilities in respect of highways or bridges. R.S.O. 1914, c. 185, s. 232 (2-5).

Saving as to highways and bridges.

233. Where, under the provisions of an agreement between a municipal corporation and a street railway company or any person from whom a street railway company has derived its title, the corporation has become or shall hereafter become entitled to grant to another company or person the right to construct and operate a street railway on any street or part of a street upon which such first mentioned company was authorized or empowered to construct or operate its railway or any part of it, by reason of the failure of such company to construct and operate or to operate its railway thereon, such corporation, instead of granting such right to another company or person, may itself construct, operate and maintain a railway thereon either as a separate and distinct

Construction and operation of street railway by municipality where corporation has power to grant franchise to a company.

line of railway or as part of any other railway which such corporation owns or operates or has power to construct or operate. R.S.O. 1914, c. 185, s. 233.

Sunday Cars.

Street rail-
ways, etc.,
not to be
operated on
Sunday.

234.—(1) Subject to section 235 no company or municipal corporation operating a street railway, tramway or electric railway shall operate the same or employ any person thereon on the first day of the week commonly called Sunday, except for the purpose of keeping the track clear of snow or ice, or for the purpose of doing other work of necessity. R.S.O. 1914, c. 185, s. 234 (1).

Exceptions.

(2) This section shall not apply to any railway company or municipal corporation which now has the right to operate its street railway, tramway or electric railway on Sunday, or to the corporation of the City of London, or the London Railway Commission, in the operation of the London and Port Stanley Railway, or to the London Street Railway Company in the operation of that part of its existing line lying in the Township of London between the north limits of the City of London and Broughs Bridge, or, subject to subsection 3, to the London Street Railway Company in the operation of that part of its existing line lying in the Township of Westminster, west of the west limit of the City of London. R.S.O. 1914, c. 185, s. 234 (2); 1914, c. 21, s. 40; 1917, c. 27, s. 31; 1919, c. 44, s. 1.

Operating
cars in
Township
of West-
minster on
Sunday.

Conditions
upon which
cars may be
operated.

(3) Nothing in subsection 2 of this section shall entitle the London Street Railway Company to run any of their cars on any Sunday in the Township of Westminster, unless and until the said company has received permission from the Council of the Corporation of the City of London and from the Public Utilities Commission of the City of London by by-laws to run their cars on Sunday, and then only and subject to such terms and conditions as may be contained in such by-laws, and unless and until the said company has also entered into an agreement or agreements with the said corporation, and the said the Public Utilities Commission of the City of London, to observe the terms and conditions of the by-laws. 1919, c. 44, s. 2.

Penalty.

(4) For every train run or operated in violation of this section the company shall incur a penalty of \$400, recoverable by any person suing for the same under this section and for the purpose thereof.

Application
of penalties.

(5) All money recovered under this section shall be appropriated as follows: One-half to the plaintiff and the other to the corporation of the local municipality from which the train or car started; but if the train or car is operated by the corporation of the municipality from within the limits of

which the same started the plaintiff shall receive the whole amount so recovered.

(6) The conductor or other person in charge of any train run or operated in contravention of this section shall, for every such offence, incur a penalty not less than \$1 nor more than \$40, recoverable under *The Summary Convictions Act*. Liabilities of conductor.
Rev. Stat. c. 121.

(7) This section shall apply to all electric and street railways, whether operated on a highway or on a right of way owned by the company. R.S.O. 1914, c. 185, s. 234 (3-6). Application of section.

235.—(1) Subject to subsections 2 and 3, and notwithstanding anything in this Act or any other Act, street railways may be operated on Sunday within a city having a population of over 15,000 after a majority of those voting of the electors qualified to vote at municipal elections have voted in the affirmative in answer to the question: “Are you in favour of operating street railways on Sunday?” R.S.O. 1914, c. 185, s. 235 (1); 1920, c. 56, s. 1. Operation of street cars on Sunday in city of 15,000.
Submitting question to electors.

(2) The question shall not be submitted until the Lieutenant-Governor in Council has declared that the population of the city is over 15,000, and the Lieutenant-Governor in Council may require a census to be taken and may prescribe the nature of the census and the time and manner of taking the same. R.S.O. 1914, c. 185, s. 235 (2); 1920, c. 56, s. 1. Ascertaining population.

(3) When the Lieutenant-Governor in Council has declared that the population of the city is over 15,000, the question may be submitted at the annual municipal election, if the municipal council shall have decided on or before the 1st of December preceding the date of such election to submit the question, and shall not later than the 15th of December have given notice of such decision by public advertisement, for at least one week in each issue of some daily newspaper published in the municipality. R.S.O. 1914, c. 185, s. 235 (3); 1920, c. 56, s. 1. Declaration as to population conclusive.

(4) The provisions of *The Municipal Act* as to the submission of questions to the electors and the voting thereon and the imposition of penalties and the prevention of corrupt practices in connection with elections shall apply to a vote taken under the provisions of this section, but no person shall be entitled to vote more than once on the question. Application of Municipal Act.
Rev. Stat. c. 233.

(5) Nothing in this section shall entitle a street railway company, which has entered into an agreement with a municipal corporation not to run cars on Sunday, to run any of their cars on any Sunday unless and until the company has received permission from the council of such corporation by by-law to run their cars on Sunday, and then only under and subject to such terms and conditions as may be contained Agreement not to be affected.

in such by-law, and unless and until the company has also entered into an agreement with the corporation to observe the terms and conditions of the by-law. R.S.O. 1914, c. 185, s. 235 (4, 5).

Hours of Labour.

Employees
not to work
for more
than six days.

236. No employee shall be required or permitted to work for more than six days of ten hours each in any one week. R.S.O. 1914, c. 185, s. 236.

Nor on two
successive
Sundays.

237. Where a railway is operated on Sunday no employee shall be required or permitted to work on any Sunday when he has worked on the previous Sunday. R.S.O. 1914, c. 185, s. 237.

Penalty.

238. For each day on which a breach of either of the two next preceding sections is committed the corporation or company offending shall incur a penalty of not less than \$25 or more than \$100. R.S.O. 1914, c. 185, s. 238.

Protection of Wires, Pipes and Cables.

Duty to erect
guard wires.

239.—(1) The company, when operating any portion of its railway across or along a highway by means of electricity conveyed by wires above ground, shall cause to be strung and maintained guard wires, as far as may be reasonably possible, sufficient to prevent telegraph, telephone or other wires strung across or along the highway from coming into contact with or falling upon the wires conveying such electricity.

Duty to
protect water
pipes, etc.,
from injury
by electricity.

(2) The company, when operating any portion of its railway by means of electricity, shall use such means and appliances as may, as far as may be reasonably possible, prevent water pipes, gas pipes, cables and other things, placed underground from being damaged in consequence of the escape or discharge of electricity into the ground.

What to be
deemed
sufficient.

(3) Unless otherwise ordered by the Board proper bonding of the rails and connecting the rails so bonded to the electric power generator or generators with a proper and efficient system of return wires shall be taken to be a compliance with the provisions of this section.

Powers of
Board.

(4) The Board may make such order as it may deem proper to compel the proper observance of this section.

Right of
action.

(5) Any person who suffers damage by reason of the non-compliance by the company with the provisions of this section shall have a right of action against the company therefor. R.S.O. 1914, c. 185, s. 239.

Forfeiture for Non-user.

240.—(1) If a company at any time ceases to regularly use the whole or any part of its railway for a period of eighteen months, it shall, upon its being so ordered by the Board, forfeit the right to use the railway or the part unused, as the case may be, and the company shall also indemnify the corporation of the municipality in respect of the expenses incurred in taking up the rails and removing the poles and wires, and putting the highways in proper repair.

*Forfeiture
for non-user.*

(2) The corporation shall have a lien upon the rails, poles, wires, rolling stock and other property of the company until such expense is paid. R.S.O. 1914, c. 185, s. 240.

*Lien of
municipal
corporation.*

Additional Powers of Electric and Street Railways.

241.—(1) A company operating its railway by electricity, and a street railway company shall also have power to

*Powers as
to produc-
tion and use
of electricity.*

- (a) construct, maintain and operate works for the production of electricity for the motive power of the railway, and for the lighting and heating the rolling stock and other property of the company ; *Works.*
- (b) acquire by lease or purchase and to hold, utilize and develop water powers and the necessary land therewith, and to construct the necessary works for generating electricity for lighting, heating and power in operating the railway ; *Purchase of water powers.*
- (c) enter into any agreement with any person or company for supplying steam or other power for the production of electricity for the purposes of the railway, or with any electric light or electric railway company, or any company supplying or furnishing electric power, for the purchase, leasing or hiring of power to run their electric motors, carriages or cars, or for lighting or heating the same, or for any other purpose for which it may be required by the company for constructing, carrying on or operating the railway ; *Arrangements for supply of power.*
- (d) purchase lease or acquire by voluntary donation and to hold for any estate in the same and to sell, lease, alienate or mortgage any land or premises intended and necessary or suitable for park or pleasure grounds and to improve and lay out such land as parks or places of public resort, and enter into any agreement or arrangements with the corporations of the municipalities wherein the same are situate or any of them, in respect thereto, subject to the power of the council of the municipality to pass by-laws to regulate the use of such public parks and pleasure grounds, but *Power to acquire lands for parks, etc.*

Saving
as to assent
of council.

(i) none of the provisions of this clause shall have effect unless and until the council of the municipality has by by-law declared its assent to the company's acquiring land under and for the purpose mentioned in this paragraph, and

Idem as
to Sunday.

(ii) no such park or pleasure grounds shall be used for games, picnics, concerts, excursions or other public entertainments on Sunday;

Acquiring
rights for
conveying
electricity.

(e) purchase the right to convey electricity for the working of the railway and lighting or heating the same over, through or under land other than the land of the company, and, with the consent of the councils of the municipalities affected, to purchase the right to lay conduits under, or erect poles and wires on or over such land as may be determined by the company, and along and upon any of the highways, or across any of the waters in Ontario by the erection of the necessary fixtures, including posts, piers or abutments for sustaining the cords or wires of such lines, or the conduits for such electricity, upon and subject to such agreement in respect thereof as shall first be made between the company and the owners of the land affected, and between the company and the corporation of any municipality in which such works or any part thereof or of the railway may be situate, and under and subject to any by-law of the council of such municipality passed in pursuance thereof; but such works shall not be so constructed as to incommode the public use of such highways, or so as to be a nuisance thereto, or to impede the free access to any house or other building erected in the vicinity of the same or to endanger or injuriously affect the same or to interrupt the navigation of such waters.

As to Crown
lands, pub-
lic parks, etc.

(2) The rights conferred upon the company shall not be exercised within the limits of any park vested in His Majesty for the use of the public, or any land vested in commissioners for any such park, without the approval of the Lieutenant-Governor in Council.

Construction
of railway
on high-
ways.

(3) Subject to sections 246 to 252, and section 263, no railway or street railway shall be constructed or operated along any highway or public place in any municipality until first authorized by an agreement made between the company and the corporation of such municipality, and, except under and subject to the terms of such agreement and of section 260, and of any by-law of the council of the municipality passed in pursuance thereof; and in all such cases every work, matter or thing in connection with the motive power, and the

application and use thereof in so constructing and operating such railway, or the cars, carriages, engines, motors or machines thereof, shall be so constructed, erected, laid down and arranged as to impede or incommode the public use of such highway or public place as little as possible, and so as not to be a nuisance thereto, nor to interfere with the free access to any house or other building erected in the vicinity of the same, and the electric and other appliances shall be of such improved manufacture and so placed as to avoid so far as possible any danger to buildings or other property. R.S.O. 1914, c. 185, s. 241.

242.—(1) No municipal council, notwithstanding anything contained in this or any other Act to the contrary, shall pass a by-law authorizing any electric railway company or street railway company to lay out or construct its railway along any public highway until written or printed notices of the intended by-law, specifying the route to be taken by the railway, shall have been previously posted up for one month in six of the most public places in the municipality, and published weekly for at least four successive weeks in a newspaper published in the municipality or if there is no such newspaper then in a newspaper published in a neighbouring municipality, or if there is no such newspaper then in a newspaper published in the county or district town.

Notice to be given before passing by-law authorizing construction on highways.

(2) The council shall hear in person or by counsel any one whose property may be prejudicially affected by such proposed railway who desires to be heard.

Objectors to be heard by council.

(3) If, after hearing such objections as may be made, the council passes the by-law any fifteen freeholders in the municipality may petition the Board to amend or quash such by-law, and upon such petition, after hearing all parties interested, the Board shall have power to amend such by-law in such manner as to the Board may seem proper, or to quash the same.

Appeal to Board to amend or quash or amend.

(4) The costs of such proceeding shall be in the discretion of the Board and may be fixed by the Board or taxed by one of the taxing officers of the Supreme Court.

Costs.

(5) This section shall not apply to extensions within the limits of a city or town of a street railway already constructed, nor to a by-law which requires the assent of the electors under *The Municipal Franchises Act*. R.S.O. 1914, c. 185, s. 242.

Section not to apply to certain extensions. Rev. Stat. c. 240.

243.—(1) The company may, at any point or points where its line runs along a highway, deviate from the highway to a right of way owned by the company if no obstruction of the highway is thereby caused, and if the rails on such deviation do not rise above or sink below the surface of

Power to deviate.

the highway more than one inch they shall not be deemed an obstruction.

Proviso.

(2) The right conferred by this section shall not be exercised without the consent of the Board. R.S.O. 1914, c. 185, s. 243.

Limitation of transmission of electrical energy.

244. Notwithstanding anything in this Act, or in any statute, no municipal corporation shall grant to any company any exclusive right, privilege or franchise for the transmission of electrical energy for power, light and heat over or across any highway. R.S.O. 1914, c. 185, s. 244.

Expropriation by Street Railway or Incline Railway Companies.

When expropriation of land by these companies may be allowed and to what extent.

245.—(1) Where the council of a municipality, by by-law, declares that it is of opinion that a company incorporated with power to construct a street railway or incline railway in the municipality should have powers of expropriation for the purposes of building a part of its railway between two or more points, set forth in the by-law, situate within the municipality, the company, upon registering the by-law in the proper registry office, shall, in respect of land lying between the points named, possess the powers conferred upon railway companies by the sections of this Act relating to the taking of land without the consent of the owner.

Limitation.

(2) Such powers shall be exercised within two years from the passing of the by-law, and not afterwards, and the land to be taken thereunder shall not exceed one chain in width.

Niagara Falls.

(3) This section shall not apply to the tract of country extending three miles above and three miles below the Falls of Niagara, and for a width inland of one mile from the River Niagara. R.S.O. 1914, c. 185, s. 245.

Duration of Street Railway Franchises.

Limitation of duration of franchise.

246.—(1) No municipal council shall grant to a street railway company any privilege under this Act for a longer period than twenty-five years.

When municipality may assume the ownership.

(2) At the expiration of twenty-five years from the time of passing the first by-law which is acted upon conferring the right of laying rails upon any highway or at such other earlier date as may be fixed by agreement, the municipal corporation may, after giving to the company one year's notice prior to the expiration of the period limited, assume the ownership of the street railway, and all real and personal property in connection with the working thereof on payment of the actual value thereof to be determined by the Board.

How value ascertained.

(3) In ascertaining such actual value the franchise or control of tracks upon the highways shall not be estimated as of any value whatever.

(4) If the corporation does not exercise such right, the corporation may exercise the like right at the expiration of any fifth year thereafter, upon giving one year's previous notice to the company, and the privileges of the company shall continue until the ownership is assumed by the corporation. Alternative right.

(5) If a street railway extends beyond the limits of a city or town the corporation of the city or town may exercise the right conferred by this section. Who may exercise right to purchase.

(6) The corporation purchasing shall possess the same powers and authority and be subject to the same conditions, obligations and restrictions as the company, and shall be subject to all orders and directions of the Board in the same manner and to the same extent as a company operating a street railway. R.S.O. 1914, c. 185, s. 246. Position of municipality purchasing.

247.—(1) The council of any municipality into which a street railway runs may, at any time after the right of assuming the ownership of the railway accrues to a municipal corporation, require that the terms upon which the railway shall be operated in such municipality be determined; and the terms, if the company and the council of the municipality are unable to agree as to them, shall be determined by the Board, and such arrangement shall remain in force for ten years. Municipality dissatisfied with terms as to railway in certain cases, may apply to the Board.

(2) At the end of that period either party may require that the terms be settled anew in like manner for another period of ten years; but such settlement or agreement shall be without prejudice to the right hereinbefore conferred upon a city or town to assume the ownership of the railway at the expiration of any fifth year. R.S.O. 1914, c. 185, s. 247. Re-adjustment of terms.

248. Subject to section 246 a municipal corporation purchasing may, at any time, transfer its right to its street railway lines or any of them, and the whole or any part of the plant of the railway, to any person or company authorized to operate a street railway, on such terms and conditions as may be agreed upon by such street railway company and the municipal corporation. R.S.O. 1914, c. 185, s. 248. Municipality acquiring railway may transfer same to a company.

249. A company to which any lines of street railway have been transferred by a municipal corporation shall, as respects the provisions of the next preceding section, stand in the same position as the municipal corporation from which it received such transfer. R.S.O. 1914, c. 185, s. 249. Position of company so acquiring.

Limitation of Company's Powers.

250.—(1) A company shall not, without having first obtained the permission and approval of the Board, begin the construction of its railway or of any extension of it upon any highway or part of a highway upon which it has authority to construct or extend its railway. Railway not to be constructed on highway without sanction of Board.

When Board
may with-
hold per-
mission.

(2) The Board may withhold its permission and approval where it is of opinion that it has not been made to appear that the construction or extension upon such highway or part of a highway is necessary or convenient for the public service, or where, in the opinion of the Board, it is not in the public interest that the railway should be constructed or extended upon such highway or part of a highway.

Additions
or altera-
tions of
line.

(3) This section shall apply to any addition to or alteration of the line of the railway as constructed, and shall apply notwithstanding the terms of any agreement between the company and any municipal corporation.

Application
to street
railway.

(4) This section shall apply to all railways however operated and to street railways. R.S.O. 1914, c. 185, s. 250.

Municipal
Franchises
Act.

Rev. Stat.
c. 240.

251. Nothing in this Act shall authorize the passing of any by-law, the making of any agreement, the granting of any franchise or privilege, or the doing of any other thing in contravention of *The Municipal Franchises Act*. R.S.O. 1914, c. 185, s. 251.

Duration of Privileges to Operate Electric Railways along Highways.

Limitation of
duration of
franchise.

252.—(1) No municipal council shall grant to a company any privilege to operate its line along a highway for a longer period than twenty-five years.

Extension.

(2) At the expiration of the period for which the privilege was granted the council may extend such privilege for a further term, not exceeding twenty-five years, on such terms and conditions as may be agreed upon by the council and the company, or, with the consent of the Board, the corporation of such municipality may assume the ownership of that portion of the railway operated on the highways of such municipality upon payment of the actual value thereof, to be determined by the Board.

When muni-
cipality may
assume own-
ership.

Value.

(3) In ascertaining such actual value the franchise or control of the tracks upon such highways shall not be estimated as of any value whatever.

Notice of
intention to
take over
railway.

(4) The corporation shall not have the right to assume such ownership unless notice of the intention so to do has been given to the company one year prior to the expiration of the privilege or franchise, and in no case shall a municipal corporation assume such ownership without the consent of the Board.

Application
of section.

(5) This section shall only apply to electric railways that are not street railways. R.S.O. 1914, c. 185, s. 252.

Fenders, Brakes, etc.

253.—(1) A company operating any portion of its line by means of electricity along a highway shall from time to time adopt and use in the front of each motor car a fender or guard, and shall from time to time adopt and use a brake and other life-saving appliances of a design approved from time to time by the Board. Approval of fenders and other appliances.

(2) The fender, guard, brake or other life-saving appliance so approved of by the Board shall be adopted and used upon the cars of the company within the time fixed by the order approving of the same, or by any order extending such time. Adoption.

(3) Where the cars are equipped with fenders of a class so approved by the Board the company shall not be liable for non-compliance with any by-law or agreement relating to the class of fenders to be used in any city or town, or any requirement of the engineer or other officer of the municipality under any such by-law or agreement. Use of approved fenders.

(4) The company shall pay to the corporation of the municipality in which such railway is operated the sum of \$10 for each day in which any motor car is operated within such municipality without having such a fender, guard, brake or other life saving appliance thereon, except in cases of accident or unavoidable necessity. Penalties for not providing fenders, etc.

(5) If the Board so orders the company shall allow tests to be made on any of its motors or cars, of any fender, guard, brake or other life-saving appliance which the Board deems advisable to have tested with a view to ascertaining its efficiency for the purpose for which it is designed. R.S.O. 1914. c. 185. s. 253. Tests of fenders, brakes, etc.

Conveniences, etc.

254.—(1) Every street railway company and incline railway company shall, within six months after being so ordered by the Board, provide, furnish and thereafter maintain suitable and sanitary urinals and other conveniences for the use of the employees of the company operating its cars. Conveniences for street railway employees.

(2) Such urinals and other conveniences may be located upon land owned or provided by the company and reasonably accessible to each of the lines of railway operated by the company, and at such points as the Board may direct, within the limits of the city or town, and the employees of the company shall be allowed reasonable opportunity of access thereto. Location.

(3) The company shall incur a penalty of \$10 per day for each day upon which it neglects to provide such urinals or other conveniences. Penalty for not supplying.

Cost of providing conveniences.

(4) The Board shall determine whether the cost of such urinals and conveniences shall be borne by the company or by the city or town within the limits of which the company's lines are operated, or by both, and if by both the proportions in which the same shall be borne by them respectively, in case the parties are unable to agree, as may be determined by the Board.

City or town may be ordered to provide site.

(5) The Board may order the city or town to provide the site for such urinals or other conveniences, upon such terms as to cost and otherwise as the Board may determine.

Board may order conveniences to be open to the public.

(6) When so ordered by the Board such urinals and conveniences shall be open to the public as well as to the employees of the company, and when so open the Board may order the cost of the maintenance of the same to be borne by the city or town and the company in such proportions as may be deemed proper. R.S.O. 1914, c. 185, s. 254.

Sanitary conveniences on cars.

255.—(1) The Board may order a company to provide sanitary conveniences for the use of passengers on all passenger cars.

Application.

(2) This section shall only apply to electric railways that are not street railways, and to steam railways. R.S.O 1914, c. 185, s. 255.

“Pay as You Enter” System.

Conditions upon which “pay as you enter” cars may be operated.

256.—(1) What is known as the “pay as you enter system” of collecting fares shall not be operated on any street railway car unless the design of the car has been approved by the Board.

Penalty.

(2) Every company or person who contravenes this section shall therefor incur a penalty of \$100 per day for each car operated contrary to the provisions of this section. R.S.O. 1914, c. 185, s. 256.

One man as motorman and conductor.

257. No street railway car or electric railway car, when engaged in carrying passengers, shall be operated with one man performing the duties of both motorman and conductor, without the approval of the Board; and the Board may make orders and regulations in respect of the construction and operation of such cars and may define and limit the routes upon which they may be operated. 1918, c. 30, s. 3.

Unclaimed Property.

Notification of owner.

258.—(1) Where unclaimed property is left in a car the company shall ascertain if possible the owner of it, and as soon as possible after such property comes into its possession, notify him of the fact by mail and of the place where the property may be claimed.

(2) Every company which has such property, not being perishable property, in its possession for three months may sell the same at public auction, after giving notice by one publication, at least ten days prior to the sale, in a daily newspaper published in the city or town in which the sale is to take place, of the time and place at which it will be held, and such sale may be adjourned from time to time until all the articles are sold.

Disposal of
non-perish-
able property.

(3) Perishable property so left may be immediately sold without notice.

Perishable
property.

(4) The places at which the property may be claimed shall be subject to the approval of the Board. R.S.O. 1914, c. 185, s. 257.

Places of
deposit.

Transfer in Ownership of Highways.

259. Where a railway, operated by electricity upon a highway or a portion thereof which is so operated, has been or shall hereafter be, constructed in a municipality under an agreement with the corporation thereof, or with the corporation having the control of the highway, and the territory or any part of the territory, in which such railway has been, or shall be constructed, is subsequently annexed to another municipality, or the highway along which such railway has been or shall be constructed, has ceased to be owned or controlled by the corporation of one municipality, and has become vested in or has been placed under the control of another corporation, then, so far as such agreement relates to the maintenance and repair of the track and roadbed of the railway or the remaining portions of the highway or highways over which the railway is operated, and to the removal of snow and ice from the company's track and the disposal thereof, the corporation of such last mentioned municipality, and any officer or person appointed for such purpose, shall be substituted for and shall have all the rights and may exercise all the powers and be subject to the same duties as the municipal corporation party to such agreement and any officer or person charged with the performance of any duty thereunder in respect of the matters aforesaid. R.S.O. 1914, c. 185, s. 258.

Agreements
with com-
panies as to
certain mat-
ters to
enure for
benefit of
municipality
owning road.

Agreements with Municipalities for Operating Along Highways.

260. Any agreement between a municipal corporation and a company under which the company obtains a right or franchise to operate its railway along a highway, except so far as such provisions are expressly excluded by such agreement, shall be deemed to contain provisions that

Clauses to
be included
in agree-
ments.

(a) the rails of the company shall conform to the grade of the highway;

Rails to be
flush with
street, etc.

- (b) where the rails are laid upon the paved or travelled portion of a highway, or on any part thereof, they shall be laid as nearly as practicable flush with the highway, and so as to cause the least possible impediment to the ordinary traffic, and shall be so kept and maintained by the company;

Company to
keep road-
way in
repair.

- (c) the company, so long as it uses any of its tracks on the travelled portion of a highway, shall keep in repair the whole space used on its track allowances, crossings, switches and turnouts and eighteen inches of the highway outside of its tracks;

Company
neglecting
to repair.

- (d) if the company neglects to keep in repair its track allowances and crossings, switches and turnouts or to have the necessary repairs according to the agreement made thereon, the council may give notice to the company requiring such repairs to be made forthwith, and the certificate of the engineer, appointed by the council for the time being, as to the necessity for such repairs shall be binding and conclusive upon the company, and if, after giving such notice, the company does not within one week begin, and thereafter, with all reasonable diligence, carry such work of repairing to completion, the council shall have the right to cause such repairs to be made, and the company shall pay to the treasurer of the municipality the expenditure incurred in making or completing such repairs;

Penalty.

- (e) the payment of such amount shall not relieve the company from any penalty provided for the omission to repair by the agreement between the corporation and the company;

Speed.

- (f) a car or train of cars shall not be operated on the travelled portion of any highway at a greater speed than fifteen miles an hour unless authorized by the Board, and it shall be operated at a less rate of speed if so ordered and directed by the Board;

Intersecting
roads.

- (g) at the intersection of the railway with highways crossing or intersecting the highway upon which the railway is operated the company shall construct and keep in repair crossings of a similar character to those adopted by the municipal corporation, and shall construct underneath its track allowance such culverts and waterways as are, in the opinion of the council or its engineer or other officer appointed for that purpose, necessary for drainage purposes, and shall at the entrance to private properties abutting upon the railway con-

Culverts.

struct such approaches as may be directed by the council or such officer or by the Board;

- (h) when the tracks are built over a culvert, the company shall, when so directed by the council or such engineer or other officer or by the Board, extend such culvert so that the portion of the highway to be travelled upon by the public shall have a width of at least eighteen feet between the nearest track and the end of the culvert upon the side of the highway opposite to such track; Width of culverts.
- (i) the company shall remove the snow from and within its tracks and switches, but any snow put upon the graded part of the highway by the company shall be evenly spread thereon in a manner to be approved by the council or its engineer or other officer; Removal of snow.
- (j) the council may at any time, after giving to the company twenty days' notice of its intention so to do, take up any part of the highway upon which the railway is constructed for the purpose of altering the grade of the highway, constructing sewers, drains, culverts or side crossings, laying down gas and water pipes or underground wires, and for all other purposes within the jurisdiction and authority of a municipal corporation without being liable for any compensation for damage that may be occasioned to the working of the railway or the works connected therewith; Taking up streets by municipality.
- (k) when and so often as it may be necessary for the corporation to open up a highway for the purpose of repairing it or any sewer, drain, culvert, gas or water pipe, or underground wire, or for putting in gas, water or other services, a reasonable notice shall be given to the company of the council's intention so to do, and the work thereon shall not be unnecessarily delayed, but shall be carried on and completed with all reasonable speed, due regard being had to the proper and efficient execution thereof; Notice of council's intention.
- (l) all work done by the company, under the authority of the agreement, shall be done in the most substantial manner and according to the best modern practice and under the superintendence and to the satisfaction of the engineer or officer appointed by the council for such purpose with a right of appeal to the Board; Work to be done to satisfaction of municipality's engineer.
- (m) the alignment of the company's tracks, the location of switches and turn-outs and the grades of the roadbed of its railway shall be prescribed by such engineer or other officer; Alignment, switches, turn-outs and grades.

Company to
pay for
engineer.

- (n) the company shall repay to the corporation all sums paid by it to such officer or engineer for services performed by him in connection with the company's work;

Right of
public to
use track
allowances.

- (o) all persons using the highway shall be at liberty to travel upon any part of the travelled roadway occupied by the company's railway, and in the same manner as upon other portions of the highway, and vehicles of every description shall be allowed upon such portion of the highway, but the company's cars shall have the first right of way over the railway, and all vehicles or persons travelling on that portion of the highway occupied by the railway shall turn out to let the trains or cars pass, and any person refusing or neglecting so to do shall incur a penalty not exceeding \$10, recoverable under *The Summary Convictions Act*. R.S.O. 1914, c. 185, s. 259.

Rev. Stat.
c. 121.

Remedy for Breach of Agreement.

Board to
try all
cases of
breach of
agreement.

261.—(1) Where a railway or street railway is operated in whole or in part upon or along a highway under an agreement with a municipal corporation, and it is alleged that such agreement has been violated, the Board shall hear all matters relating to such alleged violation and shall make such order as to it may seem just, and by such order may direct the company or person operating the railway, or the municipal corporation, to do such things as the Board deems necessary for the proper fulfilment of such agreement, or to refrain from doing such acts as in its opinion constitute a violation thereof.

May enter
company's
property and
exercise
functions of
directors.

(2) The Board may take such means and employ such persons as may be necessary for the proper enforcement of such order, and in pursuance thereof may forcibly or otherwise enter upon, seize and take possession of the whole or part of the railway, and the real and personal property of the company together with its books and offices, and may, for that purpose, assume and take over all or any of the powers, duties, rights and functions of the directors and officers of such company and supervise and direct the management of such company and its railway in all respects, including the employment and dismissal of officers and servants of the company, for such time as the Board shall continue to direct such management.

Company's
servants to
obey Board.

(3) Upon the Board so taking possession of such railway and property, it shall be the duty of every officer and employee of the company to obey the orders of the Board or of such person as it may place in authority in the management of any or all departments of such railway.

(4) The Board shall, upon taking possession, have power to demand and receive all money due to and to pay out all money owing by the company, and may give cheques, acquittances and receipts for money to the same extent and in as full and ample a manner as the proper officers of the company could do if no such order had been made. Power of Board to pay out and receive money.

(5) Cheques, acquittances or receipts given by the Board shall be a defence to any action that may afterwards be brought by the company against the person or corporation paying over the money for which such cheques, acquittances or receipts were given. Effect of such.

(6) The Board and the members thereof, and its officers and employees shall not be liable to any action for acts done by them or any of them under the authority of this section. Board not liable for damages.

(7) The expenses of and incidental to proceedings taken by the Board under this section shall be in the discretion of the Board, and the Board shall have power to direct by whom and to what extent the same shall be paid. Costs.

(8) The certificate of the Board as to the amount of such expenses shall be final. R.S.O. 1914, c. 185, s. 260. Idem.

262.—(1) The Board, for the purpose of enforcing compliance with any order heretofore or hereafter made by it, requiring any railway company, operating a railway or street railway in whole or in part upon or along a highway under an agreement with a municipal corporation, to furnish additional cars or equipment for its service, in addition to any other powers possessed by it, may order such company to pay to the corporation of the municipality in which the company so operates, a penalty not exceeding \$1,000 a day for non-compliance with any such order Penalty for failure to supply additional cars.

(2) An appeal from any such order or from the refusal by the Board to make an order, shall lie to the Appellate Division at the instance of either the said corporation or the said company and the judgment of the said Appellate Division shall be final and binding, and no further appeal shall be allowed. Appeal from order of Board.

(3) Notice of such appeal may be given within ten days after the date of the order of the Board, or of the refusal of the Board to make an order. 1918, c. 30, s. 4, *part*. Notice of appeal.

Radial Lines.

263.—(1) Notwithstanding anything in this Act the railway shall not be constructed along any highway within the limits of any city or town except upon and subject to such terms and conditions as have been agreed upon between the company and any street railway or electric railway company, already operating in such city or town, and the corporation of such city or town. Conditions of operating in cities and towns.

Saving of
existing
agreement.

(2) If there is an existing agreement between the corporation of such city or town and such street railway or electric railway company, the railway shall not be constructed along any such highway in contravention of the provisions of the agreement.

Terms
governing
admission
of other
railways.

(3) Where no provision is contained in the agreement for the admission of other electric or street railways then, if the council of such city or town, by by-law or resolution, requests the street railway company or electric railway company already operating in the city or town to allow its tracks or any of the highways to be used for the entrance of such other railway, or if such street railway company or electric railway company or such other railway company, by by-law or resolution, requests the council of the city or town to permit the entrance of the railway, the company so operating shall permit its tracks or any highways to be used to some central point in the city or town, and the corporation shall permit such other railway to enter within the limits of such city or town, upon such terms and conditions as to compensation, location of the central point, and otherwise as may be agreed upon between such other railway company, the council and such street railway or electric railway company, or as shall be settled and determined by the Board in case the council and the companies are unable to agree upon the same.

Grant of
franchise to
radial rail-
way not to
extend be-
yond street
railway
company's
franchise.

(4) Nothing in this section shall, without the consent of the corporation of the city or town, confer upon a company any right or privilege to so operate its railway for a longer period than the unexpired term of the franchise or privilege held or enjoyed by the company which, at the date of application to the Board under this section, is operating a railway or street railway within the limits of such city or town.

Renewal of
agreements.

(5) At the expiration of such term a new agreement granting the right or privilege may be made for a further period not exceeding twenty-five years, and in the event of the parties being unable to agree the Board may, in its discretion, order a new agreement to be made upon such terms and conditions as shall be determined by the Board.

Rights of
municipality
as to taking
over rail-
way not
affected.

(6) This section shall not confer upon the Board power to vary or annul any provision in the agreement, or in the order of the Board allowing the entrance of such other railway, which grants to the corporation of the city or town the right to take over and assume the ownership of such other railway within the limits of such city or town on the expiration of any such term. R.S.O. 1914, c. 185, s. 261.

Application
of street
railway
sections to
radial
lines operat-
ing in city
or town.

264. A company operating its railway in a city or town shall, in addition to such terms, conditions, regulations and restrictions as may be contained in any agreement with or by law of the city or town, be subject as to that portion of the railway within the limits of such city or town to the provisions of this Act respecting the construction and operation of street railways. R.S.O. 1914, c. 185, s. 262.

Examination of Motormen.

265.—(1) No person shall be employed as a motorman on any railway or street railway operated by electricity until he has been subjected to a thorough examination by an examiner or examiners, to be approved by the Board, as to his habits, physical ability and intelligence, and has undergone such training as may be prescribed by the Board, by regulation applicable generally or to the particular railway, and the examiner has reported to the Board that such person is competent to fill the position of motorman.

Examination of applicants for positions as motormen.

(2) He shall then be placed on a car with an instructor and when the examiner is satisfied as to his capability for the position of motorman he shall so certify to the Board, and, if such person is employed, he shall, so far as reasonably possible, first serve on the lines of least travel.

Certificate by instructor for as to capability.

(3) The company shall pay for the services of the examiner.

Payment of examiner.

R.S.O. 1914, c. 185, s. 263.

EXAMINATION FOR COLOUR BLINDNESS.

266.—(1) No company shall employ any person in a position which requires him to distinguish form or colour signals unless, within two years next preceding his appointment, he has been examined for colour blindness on the distinct colours in actual use as signals on the company's line of railway, and also as to his eyesight generally, by some competent person employed for the purpose by the company and approved by the Board, and has received a certificate that he is not disqualified for such position by reason of colour blindness or otherwise in respect of his eyesight.

Examination as to eyesight.

(2) The company shall cause such employees to be re-examined for colour blindness, and otherwise in respect of their eyesight, at least once in every two years.

Periodical re-examination.

(3) Nothing in this section shall prevent the company from continuing in its employment any person having defective sight in cases where the same can be fully remedied by the use of glasses or by other means satisfactory to the person making the examination.

When defect can be remedied by glasses.

(4) For every contravention of this or the next preceding section the company shall, for each offence, incur a penalty of \$100. R.S.O. 1914, c. 185, s. 264.

Penalty.

ACTIONS FOR DAMAGES.

Limitation, Inspection.

267.—(1) Subject to subsection 4 of section 139 all actions for indemnity, or for any damages or injury sustained by reason of the construction or operation of the railway, shall be commenced within one year next after the time when such

Limitation.

supposed damage is sustained, or, if there is continuation of damage, within one year next after the doing or committing of such damage ceases, and not afterwards.

Certain
actions
excepted.

(2) Nothing in this section shall apply to any action brought against the company upon any breach of contract, express or implied, for or relating to the carriage of any traffic, or to any action against the company for damages under the provisions of this Act respecting tolls.

Company
not relieved
by reason of
inspection,
etc.

(3) No inspection had under this Act, and nothing in this Act and nothing done or ordered, or omitted to be done or ordered under or by virtue of the provisions of this Act, shall relieve, or be construed to relieve, any company of or from or in any wise diminish or affect any liability or responsibility resting upon it by law, either towards His Majesty or towards any person, or the wife or husband, parent or child, executor or administrator, heir or personal representative, of any person, for anything done or omitted to be done by such company, or for any wrongful act, neglect or default, misfeasance, malfeasance, or non-feasance, of such company. R.S.O. 1914, c. 185, s. 265.

Contracts Waiving Rights, Void.

Contracts
waiving
right of
employees
damages to
void.

268.—(1) No company owning or operating a railway in whole or in part in Ontario shall adopt or promulgate any rule or regulation for the government of its servants or employees, or make or enter into any contract or agreement with any person engaged in or about to engage in its service, in which such employee directly or indirectly promises or agrees to hold such company harmless, on account of any injury he may receive by reason of any accident to, breakage, defect or insufficiency in the cars, motors, locomotives or machinery or attachments thereto belonging, and any such rule, regulation, contract or agreement shall be void and of no effect.

Not to be
entered into.

(2) No such company shall demand, accept, require, or enter into any contract or agreement with any person about to enter or in the employ of the company whereby such person agrees to surrender or waive any right to damages for personal injury or death against any such company thereafter arising; and all such contracts and agreements shall be void.

Penalty.

(3) Every company contravening or aiding in the contravention of this section shall, for each offence, incur a penalty of five hundred dollars, to be recovered in any court of competent jurisdiction by any person suing therefor.

Company
not to
operate
defective
machinery.

(4) No such company shall knowingly or negligently use or operate any car, motor or locomotive that is defective, or any car, motor or locomotive upon which the machinery or attachments thereto belonging are in any manner defective. R.S.O. 1914, c. 185, s. 266.

WAGES OF LABOURERS.—SUBSIDIES.

269.—(1) Where this Legislature has heretofore granted or hereafter grants financial aid by way of subsidy or guarantee towards the cost of railway construction, all mechanics, labourers or other persons who perform labour in such construction shall be paid such wages as are generally accepted as current for competent workmen in the locality in which the work is being performed; and if there is no current rate in such locality, then a fair and reasonable rate.

Rate of wages of labourers on construction of lines subsidized by Legislature.

(2) If a dispute arises as to what is such current rate, or a fair and reasonable rate, it shall be determined by the Board whose decision shall be final. R.S.O. 1914, c. 185, s. 267.

Decision of Board final.

270.—(1) In this section,

Interpretation.

(a) “Settlers” and “Prospectors” shall include a person who produces evidence to the proper officer of the railway company that he is an intending settler or prospector, as the case may be, in a district through which such railway runs, which evidence shall be deemed sufficient if it complies with the requirements of any Order in Council in that behalf, and shall also mean and include every member of the family of a settler or prospector residing with him using such railway or any part thereof in connection with such prospecting and settling;

“Settlers.”
“Prospectors.”

(b) “Toll” shall include any rate or charge for any passenger, animal, vehicle, goods, merchandise, or thing conveyed on the railway.

“Toll.”

(2) Every subsidy heretofore granted out of the Consolidated Revenue Fund in aid of any railway, as to any part thereof which is still unearned, and every such subsidy hereafter granted, in addition to all other lawful requirements, shall be subject to any conditions which may be imposed by the Lieutenant-Governor in Council respecting the tolls to be charged to “Settlers” or “Prospectors” using any such subsidized railway or any part thereof in connection with their prospecting and settling in any district through which the railway runs, either for freight or passenger service.

Subsidies to be subject to certain conditions as to special rates to settlers, etc.

(3) In default of compliance with such conditions, or any of them, there may be deducted and retained from any money payable in respect of such subsidy such amount as the Lieutenant-Governor in Council may deem proper, and the railway company or any assignee of a railway company claiming such subsidy shall not be entitled to receive payment of the same, or if such subsidy has been paid over prior to such default the company operating such railway shall forfeit such part thereof as may be determined by the Lieutenant-Governor in Council and the same may be recovered back

Default.

Deduction from subsidy.

Recovery.

from such company at the suit of the Attorney-General in any court of competent jurisdiction.

Current wages.

(4) Every such subsidy shall further be subject to the condition that the workmen, labourers or servants employed in or about the construction and operation of the railway shall be paid such rate of wages as may be currently payable to workmen, labourers and servants engaged in similar occupations in the district in which such railway is constructed and operated, and upon breach of such condition by the railway company there may be deducted and retained from any money payable in respect of such unearned subsidy such amount as the Lieutenant-Governor in Council may deem proper, and if the subsidy has been paid over before such breach such part thereof as may be determined by Order in Council may be recovered back from such railway company at the suit of the Attorney-General in any court of competent jurisdiction.

Where supplies to be purchased.

(5) Every railway company entitled to a subsidy either in money or in land under any Act of this Legislature, the whole or part of which is still unearned, shall, as far as practicable, construct, equip and operate its lines of railway with railway supplies and rolling stock made, purchased or procured in Canada, if the same can be obtained as cheaply and upon as good terms in Canada as elsewhere, having regard to quality, unless the Lieutenant-Governor in Council approves of the same being procured elsewhere.

Alien Labour.

(6) No person shall be employed in the construction of any railway receiving a subsidy either in money or in land who is a citizen or subject of any country having an alien labour law which has the effect of excluding Canadians from employment upon the public works of such country or on other works therein.

Penalty.

(7) For every contravention of subsection 6 the company shall incur a penalty of \$20 per day for each person so employed during the whole period of such employment. R.S.O. 1914, c. 185, s. 268.

Subsidized railways must be in safe and efficient condition.

271.—(1) Whenever it is made to appear to the Provincial Secretary that any railway owned by a company incorporated by Act of this Legislature, the construction of which has been aided by a subsidy from the Government of Ontario, cannot by reason of the condition of such railway or of its equipment be safely and efficiently operated, the Provincial Secretary may apply to the Board for an order that the railway, or its equipment, or both, shall be put in a safe and efficient condition, which order the Board is hereby authorized to make after such notice to the president or manager of the company and the trustee of the bondholders, if any, as to the Board seems reasonable; and the Board may, by order, direct what repairs, improvements or additions shall be made

Application to Board.

to the railway, or equipment, or both, and within what times the same shall be undertaken and completed respectively.

(2) If the company fails to comply with such order of the Board the Lieutenant-Governor in Council may, upon the recommendation of the Provincial Secretary, approve of such order, and direct that a copy of such order and of the order of the Lieutenant-Governor in Council approving thereof, certified by the secretary of the Board and the Clerk of the Executive Council respectively, shall be filed by the Provincial Secretary in the office of the registrar of deeds of each county through which such railway runs, and upon such orders being so filed there shall, *ipso facto*, be created a first lien or mortgage upon the railway and its equipment in favour of His Majesty for the amount of the subsidy, which shall immediately thereupon become due and payable to His Majesty.

On failure of company to comply with order, a lien may be created.

(3) Such lien may be enforced by His Majesty in the same manner and by the like proceedings as any other lien upon property may be enforced by His Majesty in the Supreme Court, and the said court may order such railway and its equipment to be sold to satisfy such lien, and pending such lien may appoint a receiver to manage and operate such railway.

Enforcement of lien.

(4) Any money realized from such sale may, with the consent of the purchaser, be applied by the Provincial Secretary, under the direction of the Board, towards the repair and improvement of such railway and equipment so far as the same may be deemed necessary by the Provincial Secretary, and any money so realized, and not in the opinion of the Provincial Secretary required for such repairs and improvements, may be paid to the company owning the railway at the time of the sale, or to the trustee for bondholders, in the event of there being outstanding bonds secured by mortgage or otherwise upon such railway. R.S.O. 1914, c. 185, s. 269.

Application of money realized.

HOURS OF LABOUR.

272. No company operating a line of railway, of twenty miles in length or over, shall require or permit a conductor, engineer, motorman, fireman, trainman, despatcher or signalman who has worked in any capacity for sixteen consecutive hours to go again on duty to perform any kind of work unless he has had at least six hours' rest. R.S.O. 1914, c. 185, s. 270.

Limit of duration of continuous employment.

273.—(1) The Board may regulate the hours during which conductors and motormen, employees of a street railway company, may be required or permitted to work, but in no case shall an employee be permitted to work more than six days in a week or ten hours per day, and, whenever practicable and reasonable, such ten hours' work shall be performed within twelve consecutive hours.

Power to regulate labour of street railway employees.

Agreements
not to affect
power to
regulate.

(2) The power conferred by subsection 1 may be exercised notwithstanding the provisions of any agreement between a municipal corporation and a railway company as to hours of labour.

Penalty.

(3) Every company which, and every director, superintendent, manager or officer of a company who contravenes the provisions of any order of the Board, made under the authority of subsection 1, or contravenes any of the provisions of this section, shall, for each contravention, incur a penalty of not less than \$100 nor more than \$250, recoverable under *The Summary Convictions Act*. R.S.O. 1914, c. 185, s. 271.

Rev. Stat.
c. 121.

RETURNS.

Annual
returns
to be pre-
pared.

274.—(1) Every company shall annually prepare returns in duplicate, in accordance with the forms for the time being required and furnished by the Board, of its capital, traffic, and working expenditure, and of all other information required.

Attestation.

(2) Such returns shall be dated and signed by, and attested upon the oath of the secretary or some other chief officer of the company, and shall also be attested upon the oath of the president, or in his absence of the vice-president or manager of the company. R.S.O. 1914, c. 185, s. 272, (1,2).

What period
to be
included.

(3) Such returns shall be made for the period beginning from the date to which the then last yearly returns made by the company extend, or if no such returns have been previously made from the commencement of the operation of the railway and ending with the last day of December in the preceding year. R.S.O. 1914, c. 185, s. 272 (3); 1922, c. 66, s. 3 (1).

When to
be made.

(4) The duplicate so dated, signed and attested in manner aforesaid shall be transmitted by the company to the Board by registered post within three months after the 30th day of November in each year. R.S.O. 1914, c. 185, s. 272 (4); 1922, c. 66, s. 3 (2).

Transmission
of returns to
Assembly.

(5) The Board shall transmit the returns so made to the Provincial Secretary and the same shall be laid before the Assembly forthwith if the Assembly is then in session, or if it is not then in session within fifteen days after the commencement of the next session. R.S.O. 1914, c. 185, s. 272 (5).

Return of
accidents to
be made
annually.

275.—(1) Every company shall annually, or more frequently if the Board so requires, make to the Board, under the oath of the president, secretary or superintendent of the company, a true and particular return in duplicate of all accidents and casualties, whether to persons or to animals or other property, which have occurred on the property of the

company or in connection with the operation thereof, setting forth—

- (a) the causes and natures of such accidents and casualties;
- (b) the points at which such accidents and casualties occurred, and whether by night or by day; and
- (c) the full extent of such accidents and casualties, and all the particulars thereof. R.S.O. 1914, c. 185, s. 273 (1).

(2) Such return shall be made for the period beginning from the date to which the then last return made by the company extended, or, if no such return had been previously made, from the commencement of the operation of the railway and ending with the last day of December in the current year. R.S.O. 1914, c. 185, s. 273 (2); 1922, c. 66, s. 4. What period to be included.

(3) Every company shall also, when required by the Board, return a true copy of the existing by-laws of the company and of its rules and regulations for the management of the company and of its railway, or of such other undertaking or business of the company as it is authorized to carry on. R.S.O. 1914, c. 185, s. 273 (3). Copies of by-laws to be furnished.

276. The Board may order and direct any company to make up and deliver to the Board from time to time, in addition to such periodical returns, returns of serious accidents occurring in the course of the public traffic upon the railway belonging to such company, whether attended with personal injury or not, in such form and manner as the Board deems necessary and requires for its information with a view to public safety. R.S.O. 1914, c. 185, s. 274. Additional returns of accidents.

277. The Board may order and direct the form in which such returns shall be made. R.S.O. 1914, c. 185, s. 275. Forms.

278.—(1) The Board may, from time to time, by notice served upon the company, or any officer, servant or agent of the company, require it, or such officer, servant or agent, to furnish the Board, at or within any time stated in such notice, a written statement or statements showing in so far, and with such detail and particulars, as the Board requires, Returns to Board of

- (a) the assets and liabilities of the company; Assets and liabilities.
- (b) the amount of its stock issued and outstanding and the date at which any such stock was so issued; Of stock issued and outstanding.
- (c) the amount and nature of the consideration received by the company for such issue, and in case the whole of such consideration was not paid to the Consideration for issue.

company in cash, the nature of the service rendered to or property received by the company for which any stock was issued;

Of earnings and expenditure.

(d) the gross earnings or receipts or expenditure by the company during any periods specified by the Board, and the purposes for which such expenditure was made;

Of bonuses.

(e) the amount and nature of any bonus, gift or subsidy received by the company from any source whatsoever, and the source from which and the time when, and the circumstances under which, the same was so received or given;

Of bonds.

(f) the bonds issued at any time by the company, and what portion of the same are outstanding and what portion, if any, have been redeemed;

Consideration for bonds.

(g) the amount and nature of the consideration received by the company for the issue of such bonds;

Of secured liabilities.

(h) the character and extent of any liabilities outstanding, chargeable upon the property or undertaking of the company, or any part thereof, and the consideration received by the company for any such liabilities, and the circumstances under which the same were created;

Of cost of construction.

(i) the cost of construction of the company's railway or of any part thereof;

Of cost of property.

(j) the amount and nature of the consideration paid or given by the company for any property acquired by it;

Of leases and contracts.

(k) the particulars of any lease, contract or arrangement entered into between the company and any other company or person; and

Generally.

(l) generally, the extent, nature, value and particulars of the property, earnings, and business of the company.

Powers of Board as to evidence respecting returns.

(2) The Board may summon, require the attendance of, and examine under oath, any officer, servant or agent of the company, or any other person, as to any matters included in such return, or which were required by the notice aforesaid to be returned to the Board, and as to any matter or thing which, in the opinion of the Board, is relevant to such return, or to any inquiry which the Board deems it expedient to make in connection with any of the matters in this section mentioned, and for such purposes may require the production to the Board of any books or documents in control of the company, or of such officer, servant, agent or person.

Or on inquiries respecting same.

Production of documents.

(3) Any information furnished to the Board by any such return, or any evidence taken by the Board in connection therewith, shall not be open to the public or published, but shall be for the information of the Board only.

Information
for Board
only.

(4) The Lieutenant-Governor in Council may nevertheless require the Board to communicate to him in Council any or all information obtained by it in manner aforesaid.

Or for
Lieut.-Gov
ernor in
Council.

(5) The Board may authorize any part of such information to be made public when and in so far as there may appear to the Board to be good and sufficient reasons for so doing, but if the information so proposed to be made public by the Board is of such a character that the company would, in the opinion of the Board, be likely to object to the publication thereof, the Board shall not authorize such information to be published without notice to the company and hearing any objection which the company may make to such publication. R.S.O. 1914, c. 185, s. 276.

Board may
authorize
publication.

279. If any company or officer, servant or agent thereof fails or neglects to make any of the returns required by this Act or by the Board under the authority thereof when and as required by the Board, or fails to make any such return to the utmost of its or his knowledge or means of knowledge, the company, and every such officer, servant or agent, so in default, shall severally incur a penalty recoverable under *The Summary Convictions Act* not exceeding \$10 for every day during which such default continues. R.S.O. 1914, c. 185, s. 277.

Refusal to
make returns

Penalties.

Rev. Stat.
c. 121.

280.—(1) If any company, or officer, servant or agent thereof wilfully or negligently makes any false return, or any false statement in any such return, the company, and any such officer, servant or agent offending shall be severally liable to a penalty not exceeding \$500, recoverable under *The Summary Convictions Act*.

Making false
returns
to Board.

Rev. Stat.
c. 121.

(2) Every such officer, servant or agent so offending shall also, on conviction, be liable to imprisonment for any period not exceeding six months. R.S.O. 1914, c. 185, s. 278.

Penalty.

INVESTIGATION OF ACCIDENTS.

281.—(1) Every company shall, as soon as possible, and immediately after the head officers of the company have received information of the occurrence upon the railway belonging to such company of any accident attended with personal injury to any person using the railway or to any employee of the company, or whereby any bridge, viaduct, culvert or tunnel on or of the railway has been broken or so damaged as to be impassable or unfit for immediate use, give notice thereof, with full particulars, to the Board.

Notice of
accident.

Penalty for omission.

(2) Every company which wilfully and negligently omits to give such notice shall incur a penalty of \$100 for every day during which the omission to give the same continues.

Form of notice and investigation into accidents.

(3) The Board may, by regulation, declare the manner and form in which such information and notice shall be given and the class of accidents to which this section shall apply, and may declare any such information so given to be privileged.

Inquiries.

(4) The Board may inquire into all matters and things which it deems likely to cause or prevent accidents, and the causes of, and the circumstances connected with, any accident or casualty to life or property occurring on any railway, and into all particulars relating thereto.

Order thereupon.

(5) The Board may order the company to suspend or dismiss any employee of the company whom it may deem to have been wilfully negligent in respect of any such accident.

Inclusion in annual report.

(6) The Board shall include in its annual report to the Lieutenant-Governor in Council the result of any such enquiry with such recommendations as to it may seem proper. R.S.O. 1914, c. 185, s. 279.

When admissible as evidence.

282. Returns and notices relating to accidents made or given in pursuance of the provisions of this Act shall not be admissible in evidence in any court except to enforce the penalties for failure or neglect to furnish a return where it is incomplete or inaccurate. R.S.O. 1914, c. 185, s. 280.

ANIMALS AT LARGE.

Damages caused to or by cattle on railway.

283.—(1) When any horse, sheep, swine or other cattle at large, whether upon the highway or not, get upon the property of the company and by reason thereof damage is caused to or by such animal the person suffering such damage shall, subject to the provisions of the next following section, be entitled to recover the amount of such damage in any court of competent jurisdiction unless the company establishes that such animal got at large through the negligence or wilful act or omission of the owner or his agent, or of the custodian of such animal or his agent; but nothing herein shall be construed as relieving any person from the penalty imposed by section 285.

Proviso.

Cattle not allowed at large near railway.

(2) No horses, sheep, swine or other cattle shall be permitted to be at large upon any highway within half a mile of the intersection of such highway with any railway at rail-level, unless they are in charge of some competent person or persons to prevent their loitering or stopping on such highway at such intersection, or straying upon the railway.

When killed on property of company.

(3) The fact that any such animal was not in charge of some competent person shall not, if the animal was killed or

injured upon the property of the company and not at a point of intersection with the highway, deprive the owner of his right to recover.

(4) All horses, sheep, swine or other cattle found at large contrary to the provisions of this section may, by any person who finds them at large, be impounded in the pound nearest to the place where the same are so found, and the pound-keeper with whom they are impounded shall detain them in like manner, and subject to like regulations as to the care and disposal thereof as in the case of cattle impounded for trespass on private property. Cattle may be impounded.

(5) If the horses, sheep, swine or other cattle of any person, which are at large contrary to the provisions of this section, are killed or injured by any train at such point of intersection he shall not have any right of action against any company in respect of the same being so killed or injured. Right of action negatived.

(6) This section shall apply only to railways operating by steam or electricity upon a right of way owned by the company. R.S.O. 1914, c. 185, s. 281. Application of section.

284. No person who suffers damage, proveable under the next preceding section or by reason of the company failing to comply with section 114, shall have any right of action against such company for such damage if it was caused by reason of any person No right of action if

- (a) for whose use any farm crossing is furnished failing to keep the gates at each side of the railway closed when not in use; or, gates not closed.
- (b) wilfully leaving open any gate on either side of the railway provided for the use of any farm crossing, without some person being at or near such gate to prevent animals from passing through the gate on to the railway; or Or wilfully left open.
- (c) other than an officer or employee of the company while acting in the discharge of his duty taking down any part of a railway fence; or Or fence taken down.
- (d) turning any such horse, sheep, swine or other cattle upon or within the inclosure of any railway, except for the purpose of and while crossing the railway in charge of some competent person using all reasonable care and precaution to avoid accidents; or, Or cattle turned within railway enclosure.
- (e) except as authorized by this Act, without the consent of the company, riding, leading or driving any such horse, sheep, swine or other cattle, or suffering the same to enter upon any railway, and within the fences and guards thereof. Or railway used without consent.

R.S.O. 1914, c. 185, s. 282.

OFFENCES AND PENALTIES.

Offences.

285. Every person whoLeaving
gates open.

(a) wilfully leaves open any gate on either side of the railway, provided for the use of any farm crossing, without some person being at or near such gate to prevent animals passing through it on to the railway; or,

Taking down
fences.

(b) not being an officer or employee of the company acting in the discharge of his duty, takes down any part of a railway fence; or

Turning
animals
into railway
inclosure.

(c) turns any horse, sheep, swine or other cattle upon or within the inclosure of any railway, except for the purpose of and while crossing the railway in charge of some competent person, using all reasonable care and precaution to avoid accidents; or

Allowing
animals to
go upon
railway.

(d) except as authorized by this Act, without the consent of the company, rides, leads or drives any horse, sheep, swine or other cattle, or suffers any such horse or animal to enter upon the railway, and within the fences and guards thereof,

Penalty.
Rev. Stat.
c. 121.

shall for every such offence incur a penalty of \$20, recoverable under *The Summary Convictions Act*.

Damages to
the company.

(2) Every such person shall also be liable to the company for any damage to the property of the company, or for which the company may be responsible by reason of any such act or omission.

Damages to
person
injured.

(3) Every person guilty of any offence under this section shall, in addition to the penalty and liability therein provided, be liable to pay to any person injured by reason of the commission of such offence all damages thereby sustained. R.S.O. 1914, c. 185, s. 283.

Purchasing
stock in
other com-
panies.

286.—(1) No company shall, either directly or indirectly, employ any of its funds in the purchase of its own stock or in the acquisition of any shares, bonds or other securities issued by any other railway company; but this shall not affect the powers or rights, if any, which any company in Ontario now has or possesses by virtue of any special Act to acquire, have or hold shares, bonds or other securities of any railway company.

(a) The acquisition of each share, bond or other security, or interest, shall be deemed a separate contravention of this subsection.

(2) Every director of a railway company who knowingly permits the funds of such company to be applied, either directly or indirectly, in contravention of subsection 1 shall incur a penalty of \$500 for each such contravention.

Liability of directors.

(3) Such penalty shall be recoverable on information filed in the name of the Attorney-General, and one-half thereof shall belong to His Majesty and the other half thereof shall belong to the informer. R.S.O. 1914, c. 185, s. 284.

Penalty.—
recovery
and appli-
cation.

287.—(1) Every person not connected with the railway, or employed by the company, who walks along the track thereof, except where the same is laid across or along a highway, shall incur a penalty not exceeding \$10, recoverable under *The Summary Convictions Act*.

Walking
on track
prohibited.

Penalty.
Rev. Stat.
c. 121.

(2) Every person who

(a) wilfully breaks down, injures, weakens or destroys any gate, fence, erection, building or structure of a company; or

Destruction
of fences,
bridges, etc.

(b) removes, obliterates, defaces or destroys any printed or written notice, direction, order, by-law or regulation of a company, or any section of or extract from this Act or any other Act of this Legislature which a company or any of its officers or agents have caused to be posted, attached or affixed to or upon any fence, post, gate, building or erection of the company, or any car upon any railway;

Defacing
notices, etc.

(c) enters upon any railway train without the knowledge or consent of an officer or servant of the company with intent fraudulently to be carried upon such railway train without paying fare thereon;

Fraudulently
attempting
to travel
without
paying fare.

(d) wilfully obstructs or impedes any officer or agent of any company in the execution of his duty upon any train, railway, or upon any of the premises of the company; or,

Obstructing
railway
authorities.

(e) not being an employee of the company, wilfully trespasses by entering upon any of the stations, cars or buildings of the company in order to occupy the same for his own purposes,

Trespassing.

shall incur a penalty not exceeding \$50, recoverable under *The Summary Convictions Act*. R.S.O. 1914, c. 185, s. 285.

Penalty.
Rev. Stat.
c. 121.

288. Any person who uses any highway crossing at rail level for the purpose of passing on foot along such highway across the railway, except during the time when such highway crossing is used for the passage of carriages, carts, horses, sheep, swine or cattle along such highway, shall incur a pen-

Using level
crossings.

Penalty

Rev. Stat.
c. 121.

alty not exceeding \$10, recoverable under *The Summary Convictions Act* if

If foot-bridge.

(a) the company has erected and completed, pursuant to the order of the Board, over its railway at or near, or in lieu of, such highway crossing a foot bridge, or foot bridges, for the purpose of enabling persons passing on foot along such highway to cross the railway by means of such bridge or bridges; and

Maintained.

(b)* such foot bridge is maintained, or such foot bridges are maintained, by the company in good and sufficient repair. R.S.O. 1914, c. 185, s. 286.

Penalty for
erection,
etc., of
structures
in violation
of this
Act.

289. Every company which erects, operates or maintains any bridge, approach, tunnel, viaduct, trestle, or any building, erection or structure, in violation of this Act or of any order or regulation of the Board, shall, for each offence, incur a penalty of \$50. R.S.O. 1914, c. 185, s. 287.

Liability of
company,
directors,
etc., in cer-
tain cases.

290.—(1) Any company, or any director or officer thereof, or any receiver, trustee, lessee, agent or person acting for or employed by such company, that does, causes or permits to be done any matter, act or thing contrary to the provisions of this or the special Act, or to the orders or directions of the Lieutenant-Governor in Council, or of the Board made hereunder, or omits to do any matter, act or thing thereby required to be done on the part of any such company or person, shall, if no other penalty is provided in this or the special Act for any such act or omission, incur, for each offence, a penalty of not less than \$20 and not more than \$5,000, in the discretion of the court before which the same is recoverable.

Penalty.

Liability for
damage.

(2) Such company, director, officer, receiver, trustee, lessee, agent or person shall also, in any case, in addition to any such penalty, be liable to any person injured by any such act or omission for the full amount of damages sustained thereby, and such damages shall not be subject to any special limitation, except as expressly provided for by this or any other Act. R.S.O. 1914, c. 185, s. 288.

Selling
liquor to
railway
employees
on duty.

291. Every person who sells, gives or barter any spirituous or intoxicating liquor to or with any servant or employee of any company while on duty shall incur a penalty not exceeding \$25 recoverable under *The Summary Convictions Act*. R.S.O. 1914, c. 185, s. 289.

Rev. Stat.
c. 121.

Intoxication
while on duty.

292. Every conductor, locomotive engineer, motorman, train despatcher, telegraph operator, station agent, switchman, signal man, bridge tender, or any other person who is intoxicated or under the influence of liquor while on duty,

in charge of or in any employment having to do with the movement of trains upon any railway, shall incur a penalty not exceeding \$400, recoverable under *The Summary Convictions Act*, and shall, upon conviction, also be liable to imprisonment for any term not exceeding five years, or both, in the discretion of the court before which the conviction is had, and according as such court considers the offence proved to be more or less grave as causing injury to any person or property, or as exposing or likely to expose any person or property to injury, although no actual injury occurs. R.S.O. 1914, c. 185, s. 290.

Penalty.
Rev. Stat.
c. 121.

293. Every person who wilfully or negligently violates any lawful by-law, rule or regulation of the company shall incur, on summary conviction, for each offence a penalty not exceeding the amount therein prescribed or, if no amount is so prescribed, a penalty not exceeding \$20, recoverable under *The Summary Convictions Act*, but no such person shall be convicted of any offence unless at the time of the commission thereof a printed copy of such by-law, rule or regulation was posted in some conspicuous place at or near the station at which the offender entered the train or in the passenger cars of the train. R.S.O. 1914, c. 185, s. 291.

Contraven-
tion of rules
of company.
Penalty.

Rev. Stat.
c. 121.

294. Every person who unlawfully

- (a) bores, pierces, cuts, opens or otherwise injures any cask, box or package which contains wine, spirits or other liquors, or any case, box, sack, wrapper, package or roll of goods in, on or about any car, waggon, boat, vessel, warehouse, station house, wharf, quay or premises of or belonging to any company, or

Damaging
freight with
intent to
steal contents.

- (b) drinks or wilfully spills or allows to run to waste any such liquors or any part thereof

Drinking or
wasting
liquor.

shall incur a penalty not exceeding \$20, recoverable under *The Summary Convictions Act*, and shall be liable to the person aggrieved for any damages sustained by reason of such wrongful act. R.S.O. 1914, c. 185, s. 292.

Penalties.
Rev. Stat.
c. 121.

295. Every person who wilfully breaks down, injures, weakens, destroys or interferes with any pole, wire, insulator, structure or erection for carrying wires of an electric railway company, or for the transmission of electric power, or who shoots at any insulator on any such poles, erections or structures with fire-arms of any kind, or throws stones or other missiles at, or breaks, or attempts to break the same in any way, or flings or causes to be placed any wire, rope, string or stick at, upon or across the said wires, or without authority climbs any of such poles or structures or erections used for transmitting electric current, or removes, obliterates, defaces

Interfering
with electric
wires, poles
etc., or
notices.

or destroys any printed or written notice, direction, order, by-law or regulation of the Board or of the company or any section or extract from this Act or any other Act of this Legislature, attached or affixed to or upon any pole, tower, fence, post, gate, building or erection of the company, shall incur a penalty not less than \$15 and not exceeding \$100, recoverable under *The Summary Convictions Act*. R.S.O. 1914, c. 185, s. 293.

Rev. Stat.
c. 121.

Each day's
contraven-
tion of
this Act,
or order
hereunder,
a distinct
offence.

296. When the violation of, or failure to comply with, any provision of this Act, or with any regulation, order or direction of the Board, or of any inspecting engineer, is made an offence subject to penalty by this Act or by any regulation made thereunder, each day's continuance of such violation or failure to comply shall constitute a new and distinct offence. R.S.O. 1914, c. 185, s. 294.

Act or omis-
sion of
officer, etc.,
deemed to
be act or
omission of
company.

297.—(1) For the purpose of enforcing any penalty under any of the provisions of this Act, or enforcing any regulation, order, or direction of the Board, or of any inspecting engineer, made under this Act, the act, omission, or failure of any officer, agent, or other person acting for or employed by the company shall, if within the scope of his employment, in every case be also deemed to be the act, omission or failure of such company as well as that of the person.

Acts or
omissions by
company in
its corporate
character.

(2) Anything done or omitted to be done by the company, which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by the company, would constitute an offence under this Act, shall also be held to be an offence committed by such company, and upon conviction thereof the company shall be subject to the like penalties as are prescribed by this Act with reference to such persons. R.S.O. 1914, c. 185, s. 295.

Punishment
for contra-
vention of
this Act,
etc., not
to exempt
company
from for-
feiture.

298. No penalty or punishment for a contravention of this Act or of the special Act by the company shall exempt the company from the forfeiture of the privileges or franchise conferred on it by such Acts, or by any agreement between the company and any municipal corporation if, by the provisions thereof or by law, the same be subject to forfeiture by reason of such contravention. R.S.O. 1914, c. 185, s. 296.

RECOVERY OF PENALTIES.

Penalties
to be a first
charge on
railway, etc.,
of company.

299. If any company has been adjudged to pay a penalty under this Act such penalty shall be the first lien or charge upon the railway, property, assets, rents and revenues of the company. R.S.O. 1914, c. 185, s. 297.

300. No prosecution shall be had against any company or any municipal corporation for any penalty under this Act where the penalty may exceed \$100 without the leave of the Board being first obtained. R.S.O. 1914, c. 185, s. 298.

Prosecution
for penalty
exceeding
\$100.

301. All penalties incurred under any of the sections of this Act, unless otherwise provided, may be recovered by action in the name of His Majesty by the Attorney-General of Ontario; and all penalties recovered under this Act shall, unless otherwise herein expressly provided, be paid to the Treasurer of Ontario to the credit of the Consolidated Revenue Fund. R.S.O. 1914, c. 185, s. 299.

Recovery
of penalties
by action.

Application
of penalties.

TRANSMISSION OF POWER ON RIGHT OF WAY.

302. Upon receiving authority in that behalf from the Lieutenant-Governor in Council, the Board, its officers, agents and servants may at all times enter upon the right of way of the company and may dig up the same, erect thereon all necessary poles, or lay all necessary conduits, and erect, place and put down all cables, wires and poles for the transmission of electrical or other power from any point in Ontario to the works and plant of any municipal corporation for the distribution of such power within the limits of the municipality, but the track and traffic, wires and poles of the company shall not be injured, removed or otherwise dealt with in the exercise of the powers hereby conferred except under and subject to any agreement which may be entered into between the Lieutenant-Governor in Council and the company. R.S.O. 1914, c. 185, s. 300.

Crown may
use right of
way for the
transmission
of power to
municipalities.

USE OF RAILWAY BY DOMINION GOVERNMENT.

303.—(1) His Majesty's mail, His Majesty's naval or military forces or militia, and all artillery, ammunition, provisions or other stores for their use, and all policemen, constables and others travelling on His Majesty's service shall at all times, when required by the Postmaster-General, the Commander of the Forces, or any person having the superintendence and command of any police force, and with the whole resources of the company if required, be carried on the railway on such terms and conditions and under such regulations as may be made by the Governor-General in Council or the Lieutenant-Governor in Council.

Provision as
to the carriage
of His Majesty's
mail, etc.

(2) The company shall, when required so to do by the Governor-General or Lieutenant-Governor, or by any person thereunto authorized by either of them, place any electric, telegraph and telephone lines, and any apparatus and operators which it has, at the exclusive service of his Government, receiving thereafter reasonable compensation for such service. R.S.O. 1914, c. 185, s. 301.

Government
to have
exclusive
use of
telegraph.

CONVEYANCES OF LAND.

Conveyances
of land to
company.

304. Conveyances of land to the company, for the purposes of and powers given by this Act, made in the form set forth in Schedule "A" to this Act or to the like effect, shall be sufficient conveyance to such company, its successors and assigns of the estate or interest therein mentioned, and sufficient bar of dower respectively of all persons executing the same; and such conveyances shall be registered in the same manner, and upon such proof of execution as is required under the registry laws of Ontario. R.S.O. 1914, c. 185, s. 302; 1918, c. 30, s. 5.

SCHEDULE "A."

(Section 304.)

Know all men by these presents that I (or we) (*insert the name or names of the vendor or vendors*) in consideration of

dollars paid to me (or us) by The _____ Railway Company, the receipt whereof is hereby acknowledged, do grant and convey unto the said company, and I (or we) (*insert the name or names of any other party or parties*) in consideration of

dollars paid to me (or us) by the said company, the receipt whereof is hereby acknowledged, do grant and release all that certain parcel (or those certain parcels, *as the case may be*) of land (*describe the land*) the same having been selected and laid out by the said company for the purpose of its railway, to hold with the appurtenances unto the said The _____ Railway Company, their successors and assigns forever (*here insert any other clauses, covenants and conditions required*), and I (or we) the wife (or wives) of the said _____ do hereby bar my (or our) dower in the said lands.

As witness my (or our) hand and seal (or hands and seals), this _____ day of _____ one thousand nine

hundred and
Signed, sealed and delivered
in the presence of

R.S.O. 1914, c. 185, Sched. "A."

CHAPTER 225.

The Railway and Municipal Board Act.

1. The interpretation sections of *The Railway Act* shall apply to this Act. R.S.O. 1914, c. 186, s. 2. Interpre-
tation.
Rev. Stat.
c. 224.

2. In this Act,

(a) "Public Utility" shall mean and include any water-works, gasworks, including works for the production, transmission and supply of natural gas, electric heat, light and power works, and telegraph or telephone lines, or any works supplying the general public with necessities or conveniences; R.S.O. 1914, c. 186, s. 3 (a); 1915, c. 31, s. 1. "Public
utility."

(b) "Railway" shall include a street railway. R.S.O. 1914, c. 186, s. 3 (b). "Railway."

3. The provisions of this Act relating to railways shall apply to all railways, whether operated by steam, electricity or other motive power, including street railways. R.S.O. 1914, c. 186, s. 4. Application
of Act.

CONSTITUTION OF THE BOARD.

4.—(1) The Lieutenant-Governor in Council may, from time to time, appoint a commission to be called "the Ontario Railway and Municipal Board." Appointment

(2) The Board shall be composed of three members, of whom shall be appointed by the Lieutenant-Governor in Council to be the chairman and another to be the vice-chairman, and each of them shall continue so to be while he is a member of the Board. Members.

(3) Vacancies caused by death, resignation or otherwise may be filled by the Lieutenant-Governor in Council, but a vacancy shall not impair the power of the remaining members to act. Vacancies.

(4) The Board shall have all the powers of a court of record and shall have an official seal which shall be judicially noticed. R.S.O. 1914, c. 186, s. 5 (1-4). Powers of
a court
of record

(5) The members of the Board shall hold office during pleasure. Tenure of
office.

- (a) The chairman of the Board, if at the time of his appointment a barrister of at least ten years standing at the bar, shall not be removed at any time by the Lieutenant-Governor in Council, except upon an address of the Assembly. R.S.O. 1914, c. 186, s. 5 (5); 1926, c. 21, s. 23.

(6) Whenever,

Powers, etc.,
of Railway
Committee
transferred
to Board.

- (a) any power or authority is given to or duty imposed upon the Railway Committee of the Executive Council of Ontario by any Act or document;

Location
of line.

- (b) by any Act of this Legislature the location of any line of railway or the route and course thereof, or the maps, plans, and specifications, or any part of the equipment, are subject to the approval of the Lieutenant-Governor in Council or of any of his Ministers;

such power or authority may be exercised and such duty shall be performed and such approval may be given by the Board.

Furnishing
informa-
tion.

- (7) Whenever in any Act it is provided that any railway company shall, during construction of any line of railway, furnish such information as to the location and plans of passenger or freight stations as may from time to time be required by the Lieutenant-Governor or any of his Ministers, or that such company shall comply with any directions that may be given for the erection of stations, or the number of them, such information shall be furnished to the Board and its directions shall be complied with by the company. R.S.O. 1914, c. 186, s. 5 (6, 7).

Power of
Vice-Chair-
man.

- 5.**—(1) In case of the absence of the chairman, or of his inability to act, or of a vacancy in the office, the vice-chairman shall exercise the powers of the chairman for or instead of the chairman, and in such case all regulations, orders and other documents signed by the vice-chairman shall have the like force and effect as if signed by the chairman.

Presumption
of having
duly acted.

- (2) Whenever the vice-chairman appears to have acted for and instead of the chairman, it shall be conclusively presumed that he so acted in the absence or disability of the chairman within the meaning of this section. R.S.O. 1914, c. 186, s. 6.

Quorum.

- 6.** Two members shall form a quorum and, except as provided by section 7, not less than two members shall attend at the hearing of every case, and the chairman, when present, shall preside, and his opinion upon any question of law shall prevail. R.S.O. 1914, c. 186, s. 7.

Questions
of law.

Where
applications
unopposed.

- 7.** In any case in which there is no opposing party, and no notice to be given to any interested party, any one member may act alone for the Board. R.S.O. 1914, c. 186, s. 8.

8. The Board or the chairman may authorize any one of the members to report to the Board upon any question or matter arising in connection with the business of the Board, and when so authorized such member shall have all the powers of two members sitting together for the purpose of taking evidence or acquiring the necessary information for the purpose of such report, and upon such report being made to the Board, it may be adopted as the order of the Board, or otherwise dealt with as to the Board seems proper. R.S.O. 1914, c. 186, s. 9.

Reference
to a member

9. Whenever any member is interested in any matter before the Board, the Lieutenant-Governor in Council may, upon the application of such member or otherwise, appoint some disinterested person to act as a member, *pro hac vice*, and the Lieutenant-Governor in Council may also appoint a member during the sickness, absence or inability to act of any member. R.S.O. 1914, c. 186, s. 10.

Appointments
pro hac vice

10.—(1) No member or officer of the Board shall, directly or indirectly,

Prohibition
against
holding
railway
stock, etc.

(a) hold, purchase, take or become interested in any stock, share, bond, debenture or other security, of any railway company, street railway company or public utility subject to this Act; or,

(b) have any interest in any device, appliance, machine, patented process or article, or any part thereof, which may be required or used as a part of the equipment of railways or of street railways, or of any rolling stock to be used thereon, or of any such public utility.

Or having
interest in
appliances.

(2) If any such stock, share, bond or other security, device, appliance, machine, patented process or article, or any part thereof, or any interest therein, shall come to or vest in any member or officer of the Board by will or succession for his own benefit he shall, within three calendar months after the same shall so come to or vest in him, absolutely sell and dispose of the same or his interest therein.

Duty to
dispose of
interest.

(3) No member or officer of the Board shall act as director or officer of any public utility company or of any company which has power to invest any portion of its funds in the securities of a railway, street railway, or public utility company. R.S.O. 1914, c. 186, s. 11.

Members of
Board not
to be officers
or directors
of certain
companies.

11.—(1) The members shall devote the whole of their time to the performance of their duties under this Act, and shall not accept or hold any office or employment inconsistent with this section. R.S.O. 1914, c. 186, s. 12.

Exclusive
attendance
to duties.

Member of Board may be Director of the Bureau of Municipal Affairs.

(2) Provided that, notwithstanding anything enacted or implied by this or any other Act, one member of the board may be Director of the Bureau of Municipal Affairs, and in such case may be paid as director the salary voted for that office out of the appropriation for the Bureau of Municipal Affairs in addition to his salary as a member of the board. 1919, c. 25, s. 25.

Offices at Toronto.

12. The Lieutenant-Governor in Council shall provide, within the City of Toronto, a suitable place in which the sittings of the Board may be held, and also suitable offices for the members, secretary, staff and other employees, and all necessary furnishings, stationery and equipment for the establishment, conduct and maintenance of the same, and for the performance of the duties of the Board. R.S.O. 1914, c. 186, s. 13.

Sittings of Board.

13.—(1) The Board shall sit at such times and places and conduct its proceedings in such manner as may seem to it most convenient for the speedy despatch of business.

Private or public.

(2) The sittings may be either private or open to the public, but any complaint made to the Board shall, on the application of any party to the complaint, be publicly heard and determined. R.S.O. 1914, c. 186, s. 14.

Use of court house.

14.—(1) Where sittings of the Board, or of any member thereof, are appointed to be held in any city, town or place in which a court house is situate the member presiding at any such sittings shall have, in all respects, the same authority as a judge of the Supreme Court in regard to the use of the court house and other buildings or apartments set apart in the county or district for the administration of justice.

Use of town hall.

(2) Where sittings are appointed to be held in any municipality in which there is a hall belonging to the corporation of the municipality, but no court house, the corporation of the municipality shall allow such sittings to be held in such hall. R.S.O. 1914, c. 186, s. 15.

Secretary.

15.—(1) There shall be a secretary of the Board, who shall be appointed by the Lieutenant-Governor in Council and shall hold office during pleasure.

Duties of secretary.

(2) It shall be the duty of the secretary to

Attend sittings.

(a) attend all sittings of the Board;

Keep minutes.

(b) keep a record of all proceedings conducted before the Board or any member;

Custody of records.

(c) have the custody and care of all records and documents belonging or appertaining to the Board, or filed in his office;

- (d) obey all rules and directions made or given by the Board touching his duties or his office; Obey directions.
- (e) see that every regulation and order made by the Board is drawn pursuant to the direction of the Board, properly authenticated, and filed in his office; Authentication of regulations and orders.
- (f) keep in his office suitable books of record, in which he shall enter a true copy of every such regulation and order and every other document which the Board may require to be entered therein, and such entry shall constitute and be the original record of any such regulation or order. Record books. Evidence. R.S.O. 1914, c. 186, s. 16.

16. Upon application of any person, and on payment of such fees as the Board may prescribe, the secretary shall deliver to such person a certified copy of any such regulation or order. Certified copies of regulations or orders. R.S.O. 1914, c. 186, s. 17.

17. In the absence of the secretary the Board may appoint from its staff a secretary *pro tempore*, who shall act in the place of the secretary, or a member of the Board may act as secretary. Acting secretary. R.S.O. 1914, c. 186, s. 18.

18.—(1) The chairman shall be paid an annual salary of \$6,000, and each of the other two members shall be paid an annual salary of \$4,000 and the secretary shall be paid an annual salary to be fixed by the Lieutenant-Governor in Council not exceeding \$2,400. Salaries.

(2) Such salaries shall be payable out of the Consolidated Revenue Fund and shall be paid *pro rata* for any period less than a year. How payable. R.S.O. 1914, c. 186, s. 19.

19.—(1) The Lieutenant-Governor in Council may from time to time, upon the request of the Board, appoint one or more experts, or persons having technical or special knowledge of the matters in question, to assist in an advisory capacity in respect of any matter before the Board. Experts.

(2) There shall be attached to the Board such officers, clerks, stenographers and messengers as the Board, with the approval of the Lieutenant-Governor in Council, from time to time appoints, and the Board may, with the approval of the Lieutenant-Governor in Council, dismiss any of them. Staff of Board.

(3) The officers, clerks, stenographers and messengers attached to the Board shall receive such salaries or remuneration as may be approved by the Lieutenant-Governor in Council upon the recommendation of the Board. Salaries.

Remuneration
of appointee
to make
inquiry.

(4) Whenever the Board, by virtue of any power vested in it by this Act or any other Act, appoints or directs any person, other than a member of the staff of the Board, to perform any service required by this Act or such other Act, such person shall be paid such sum for services and expenses as the Lieutenant-Governor in Council may, upon the recommendation of the Board, determine.

Salaries and
expenses of
staff, etc.,
how to
be paid.

(5) The salaries or remuneration of all such officers, clerks, stenographers, messengers, and appointees, and all the expenses of the Board incidental to the carrying out of this Act or such other Act, including all actual and reasonable travelling expenses of the members, secretary, and of such appointees or persons on the staff of the Board as may be required by the Board to travel, necessarily incurred in attending to the duties of their offices, shall be paid monthly out of moneys appropriated by this Legislature for that purpose. R.S.O. 1914, c. 186, s. 20.

JURISDICTION AND GENERAL POWERS.

Jurisdiction
of Board
upon appli-
cation.

20.—(1) The Board shall have jurisdiction to enquire into, hear and determine any application by or on behalf of any person interested, complaining that any company, person or municipal corporation, constructing, maintaining or operating any railway, street railway, telegraph or telephone system, or any public utility, or having the control thereof, or charged with the performance of any duty or the exercise of any power in relation thereto—

Neglect of
duty under
any Act,
regulation,
order or
agreement.

(a) has failed to do any act, matter or thing required to be done by this Act or by any other general or special Act, or by any regulation, order or direction made thereunder or by any agreement entered into by the company, person or municipal corporation, or by any stipulation or condition in a municipal by-law accepted or acted upon by the company, person or municipal corporation;

Contraven-
tion of
Act, etc.

(b) has done or is doing any act, matter or thing contrary to or in contravention of this Act, or any such other Act, or any such regulation, order or direction, or any such agreement, stipulation, or condition; or

Charging
excessive
tolls.

(c) is charging tolls in excess of those approved or prescribed by lawful authority, or which are otherwise unlawful, unfair or unjust;

Giving
orders,
directions
or approval.

and requesting the Board to make any order, or give any direction, sanction or approval which by law it is authorized to give or make. R.S.O. 1914, c. 186, s. 21 (1).

General
powers.

(2) The Board may order and require any company, person or municipal corporation to do forthwith or within or at any specified time, and in any manner prescribed by the

Board, so far as is not inconsistent with this Act, any act, matter, or thing which such company, person, or municipal corporation is or may be required to do under this Act, or under any other general or special Act, or any such regulation, order, direction, agreement or by-law, and may forbid the doing or continuing of any act, matter or thing which is in contravention of any such Act or of any such regulation, order, direction, agreement or by-law. R.S.O. 1914, c. 186, s. 21 (2); 1915, c. 31, s. 2.

(3) The Board shall, as to all matters within its jurisdiction, have authority to hear and determine all questions of law or of fact.

Questions
of law
and fact.

(4) The Board shall, as respects the amendment of proceedings, the attendance and examination of witnesses, the production and inspection of documents, the enforcement of its orders, the entry on and inspection of property, and other matters necessary or proper for the due exercise of its jurisdiction, or otherwise for carrying this Act or any other general or special Act into effect, have all such powers, rights and privileges as are vested in the Supreme Court.

Powers of
amendment,
etc., etc.

(5) The fact that a manager or other official of any railway, street railway or public utility, or a liquidator or receiver has been appointed by, or is managing or operating a railway, street railway or public utility under the authority of any court, shall not be a bar to the exercise by the Board of any jurisdiction conferred by this Act or by any other general or special Act; but every such liquidator, receiver, manager or official shall be bound to manage and operate such railway, street railway or public utility in accordance with this Act and with the orders and directions of the Board, whether general or referring particularly to such railway, street railway or public utility; and he, and every person acting under him, shall obey all orders of the Board in respect of such railway, street railway or public utility, and be subject to have them enforced against him by the Board, notwithstanding the fact that such manager, official, liquidator or receiver is appointed by or acts under the authority of any court.

Jurisdiction
where
receiver,
etc., acting
under
authority
of court.

(6) The decision of the Board, as to whether any company, person or municipal corporation is or is not a party interested within the meaning of this section, shall be binding and conclusive upon all companies, persons and municipal corporations.

Parties.
Decision of
Board final.

(7) Nothing in this section shall confer upon the Board any jurisdiction as to matters which, under *The Power Commission Act* and the amendments thereto, are within the jurisdiction of The Hydro Electric Power Commission of Ontario. R.S.O. 1914, c. 186, s. 21 (3-7).

Powers of
Hydro-
Electric
Power Com-
mission.
Rev. Stat.
c. 57.

Board's
jurisdiction
exclusive.

21. The Board shall have exclusive jurisdiction in all cases and in respect of all matters in which jurisdiction is conferred on it by this Act or by any other general or special Act. R.S.O. 1914, c. 186, s. 22.

When
Board may
act.

22.—(1) The Board may, of its own motion, and shall, upon the request of the Lieutenant-Governor in Council, inquire into, hear and determine any matter or thing which it may inquire into, hear and determine upon application or complaint, and with respect thereto shall have and may exercise the same powers as, upon any application or complaint, are vested in it.

Power to act
from time to
time.

(2) Any power or authority vested in the Board under this Act or any other Act may, though not so expressed, be exercised from time to time, or at any time, as the occasion may require. R.S.O. 1914, c. 186, s. 23.

Appoint-
ment of
counsel.

23.—(1) The Lieutenant-Governor in Council may from time to time, upon the request of the Board, or of his own motion, appoint counsel to appear before the Board and conduct any enquiry or hearing or to represent the Board upon the argument of any appeal to a Divisional Court.

Costs.

(2) The Board may direct that the costs of such counsel shall be paid by any party to the application, proceeding or matter, or by the Treasurer of Ontario. R.S.O. 1914, c. 186, s. 24.

Power to
rehear,
review, etc.

24. The Board may rehear any application before deciding it or may review, rescind, change, alter or vary any decision or order made by it. R.S.O. 1914, c. 186, s. 25.

Board's
powers upon
default in
obeying
order.

25. If default is made by a company or person, or by a municipal corporation, in the doing of any act, matter or thing, which the Board has authority, under this or any other Act, general or special, to direct and has directed to be done, the Board may authorize such person as it may see fit to do the act, matter or thing, and in every such case the person so authorized may do such act, matter or thing, and the expense incurred in the doing of the same may be recovered from the company, person or municipal corporation in default as money paid for and at the request of such company, person, or municipal corporation, and the certificate of the Board of the amount so expended shall be conclusive evidence thereof. R.S.O. 1914, c. 186, s. 26; 1916, c. 24, s. 25 (1).

Enforcing
orders of
Board.
Rev. Stat.
c. 224.

26. The Board shall also have power to enforce its orders and directions respecting any public utility in the manner and by the means provided in section 261 of *The Railway Act*. R.S.O. 1914, c. 186, s. 27; 1916, c. 24, s. 25 (2).

PRACTICE AND PROCEDURE.

Notices. Evidence.

27. Any notice required or authorized to be given in writing,— Notice, requisites of.

- (a) by the Board, may be signed by the chairman or secretary;
- (b) by the inspecting engineer, or other officer or person appointed by the Board, may be signed by such inspecting engineer, officer or other person, as the case may be;
- (c) by any company or corporation, may be signed by the president or secretary, or by its duly authorized agent or solicitor; and
- (d) by any person, may be signed by such person or his duly authorized agent or solicitor. R.S.O. 1914, c. 186, s. 28.

28.—(1) Any notice required to be given to a company, a municipal or other corporation, co-partnership, firm or individual, shall be deemed to be sufficiently given by delivering the same, or a copy thereof, within the time, if any, limited therefor,— Notices, how served.

- (a) in the case of a railway company, to the president, vice-president, managing director, secretary or superintendent of the company, or to some adult person in the employ of the company at the head or any principal office of the company; Railway company.
- (b) in the case of a municipal corporation, to the head of the municipality, or to the clerk; Municipality.
- (c) in the case of any other company or corporation, to the president, vice-president, manager or secretary, or to some adult person in its employ at its head office; Other companies.
- (d) in the case of a firm or co-partnership, to any member thereof, or, at the last known place of abode of any such member, to any adult member of his household, or at the office or place of business of the firm to a clerk employed therein; and, Co-partnership.
- (e) in the case of an individual, to him, or, at his last known place of abode, to any adult member of his household, or, at his office or place of business, to a clerk in his employ. Individuals.

Service by
publication.

(2) If, in any case within the jurisdiction of the Board, it is made to appear, to the satisfaction of the Board that service of any such notice cannot conveniently be made, in the manner provided in the next preceding subsection, the Board may order and allow such service to be made by the publication of such notice for any period not less than three weeks in the *Ontario Gazette*, and also, if required, in any other newspaper; and such publication in each case shall be deemed to be equivalent to service in the manner provided in the said subsection.

Service of
other docu-
ments.

(3) Any regulation, order, direction, decision, report or other document may, unless in any case otherwise provided, be served in like manner as notice may be given under this section. R.S.O. 1914, c. 186, s. 29.

Duty of
company, on
receipt of
notice or
order.

29. Every company and every municipal or other corporation shall, as soon as possible after the receipt by it, or service upon it, of any regulation, order, direction, decision, notice, report or other document of the Board, or of the inspecting engineer, give cognizance thereof to each of its officers and servants performing duties which are or may be affected thereby, by delivering a copy to him or by posting up a copy thereof in some place where his work or his duties, or some of them, are to be performed. R.S.O. 1914, c. 186, s. 30.

Duty of
sheriffs, etc.

30. Sheriffs, deputy sheriffs, constables and other peace officers shall aid, assist and obey the Board in the exercise of the jurisdiction conferred by this Act whenever required so to do, and shall, upon the certificate of the secretary, be paid by the county interested the like fees as for similar services at the sittings of the Supreme Court for the trial of actions, and such fees shall be charged as expenses of the administration of justice. R.S.O. 1914, c. 186, s. 31.

Effect of
documents
issued by
company.

31. Every written or printed document purporting to have been issued or authorized by a company or any officer, agent or employee of a company, or any other person or company for or on its behalf, shall, as against the company, be received as *prima facie* evidence of the issue of such document by the company, and of the contents thereof, without any further proof than the mere production of such document. R.S.O. 1914, c. 186, s. 32.

Evidence of
documents.

32.—(1) Every document purporting to be signed by the chairman and secretary, or by either of them, or by an inspecting engineer, shall, without proof of the signature, be *prima facie* evidence that such document was duly signed, and shall be sufficient notice to the company and all parties interested, if served in the manner provided by section 28 for service of notice, that such document was duly signed and issued by the Board, or inspecting engineer, as the case may be.

(2) If such document purports to be a copy of any regulation, order, direction, decision or report, made or given by the Board, or inspecting engineer, it shall be *prima facie* evidence of such regulation, order, direction, decision or report, and, when served in the manner provided by section 28, shall be sufficient notice of such regulation, order, direction, decision or report from the time of such service. R.S.O. 1914, c. 186, s. 33.

Evidence of regulations, etc., etc.

33.—(1) Any document purporting to be certified by the secretary as being a copy of any plan, profile, book of reference or other document deposited with the Board, or of any portion thereof, shall, without proof of signature of the secretary, be *prima facie* evidence of such original document, and that the same is so deposited, and is signed, certified, attested or executed by the persons by whom and in the manner in which the same purports to be signed, certified, attested or executed, as shown or appearing from such certified copy, and also, if such certificate states the time when such original was so deposited, that the same was deposited at the time so stated.

Certified plan, etc., *prima facie* evidence.

(2) A copy of any regulation, order or other document in the custody of the secretary, or of record with the Board, purporting to be certified by the secretary to be a true copy and purporting to be sealed with the seal of the Board, shall be *prima facie* evidence of such regulation, order or document, without proof of the signature of the secretary. R.S.O. 1914, c. 186, s. 34.

Certified copies of documents of Board.

34. Any rule, regulation, order or decision of the Board, when published by the Board, or by leave of the Board, for three weeks in the *Ontario Gazette*, and while the same remains in force, shall have the like effect as if enacted in this Act, and all courts shall take judicial notice thereof. R.S.O. 1914, c. 186, s. 35.

Publication of regulations and orders.

Judicial notice.

35. Unless otherwise provided ten days' notice of any application to the Board, or of any hearing by the Board, shall be sufficient, but the Board may in any case direct longer or permit shorter notice of the application. R.S.O. 1914, c. 186, s. 36.

Notice of application.

Board may vary length of time.

36.—(1) When the Board is authorized to hear an application, complaint, or dispute, or make any order, upon notice to the parties interested, it may, upon the ground of urgency, or for other reason appearing to the Board to be sufficient, notwithstanding any want of or insufficiency in such notice, make the like order or decision in the matter as if due notice had been given to all parties; and such order or decision shall be as valid and take effect in all respects as if made on due notice.

Procedure in urgent cases when no notice given.

When
rehearing
in such
cases may
be had.

(2) Any person entitled to notice and not sufficiently notified may, at any time within ten days after becoming aware of such order or decision, or within such further time as the Board may allow, apply to the Board to vary, amend or rescind such order or decision, and the Board shall thereupon, on such notice to other parties interested as it may in its discretion think desirable, hear such application, and either amend, alter or rescind such order or decision, or dismiss the application, as may seem to it just. R.S.O. 1914, c. 186, s. 37.

Orders of Court.

Making
decisions or
orders.
Orders of
Court.

37.—(1) A certified copy of any order or decision made by the Board under this Act or any general or special Act may be filed in the office of the Registrar of the Supreme Court, and shall thereupon become and be enforceable as a judgment or order of the Supreme Court to the same effect, but the order or decision may be nevertheless rescinded or varied by the Board.

Board may
select
method of
enforcing
order.

(2) It shall be optional with the Board to adopt the method provided by this section for enforcing its orders or decisions or to enforce them by its own action. R.S.O. 1914, c. 186, s. 38.

Terms of Orders.

Contingent
orders.

38.—(1) The Board may direct in any order that the same, or any portion or provision thereof, shall come into force at a future fixed time, or upon the happening of any contingency, event or condition in such order specified, or upon the performance, to the satisfaction of the Board or person named by it, of any terms which the Board may impose upon any party interested, and the Board may direct that the whole, or any portion of such order, shall have force for a limited time, or until the happening of any specified event.

Subject to
terms.

Limited as
to time.

Interim
orders.

(2) The Board may, instead of making an order final in the first instance, make an interim order and reserve further directions, either for an adjourned hearing of the matter or for further application. R.S.O. 1914, c. 186, s. 39.

May grant
partial or
other relief
than that
applied for.

39. Upon any application to the Board the Board may make an order granting the whole, or part only, of such application, or may grant such further or other relief in addition to, or in substitution for, that applied for as to the Board may seem just and proper as fully in all respects as if such application had been for such partial, other, or further relief. R.S.O. 1914, c. 186, s. 40.

Interim
ex parte
orders.

40. The Board may, if the special circumstances of any case, in its opinion, so require, make an *interim ex parte* order authorizing, requiring or forbidding anything to be done which the Board would be empowered on application,

notice and hearing to authorize, require or forbid, but no such order shall be made for any longer time than the Board may deem necessary to enable the matter to be heard and determined. R.S.O. 1914, c. 186, s. 41.

41. When any work, act, matter or thing is, by any regulation, order or decision of the Board, required to be done, performed or completed within a specified time the Board may, if the circumstances of the case, in its opinion, so require, upon notice and hearing, or in its discretion upon *ex parte* application, extend the time so specified. R.S.O. 1914, c. 186, s. 42.

Extension of time specified in order.

General Rules.

42. The Board may make general rules regulating its practice and procedure. R.S.O. 1914, c. 186, s. 43.

Power to make rules.

Other Provisions.

43. An order of the Board need not show upon its face that any proceeding or notice was had or given, or any circumstance existed, necessary to give it jurisdiction to make such order. R.S.O. 1914, c. 186, s. 44.

Presumption of jurisdiction to make order.

44.—(1) In determining any question of fact the Board shall not be concluded by the finding or judgment of any other court in any action, prosecution or proceeding involving the determination of such fact, but such finding or judgment shall, in proceedings before the Board, be *prima facie* evidence only.

Effect of finding of fact in another court.

(2) The pendency of any action, prosecution or proceeding in any other court involving questions of fact shall not deprive the Board of jurisdiction to hear and determine the same questions of fact.

Jurisdiction not affected.

(3) The finding or determination of the Board upon any question of fact within its jurisdiction shall be binding and conclusive. R.S.O. 1914, c. 186, s. 45.

Effect of finding of Board on questions of fact.

45.—(1) The Board may, at the request of the Lieutenant-Governor in Council, or of its own motion, or upon the application of any party, and upon such security being given as it directs, state a case in writing for the opinion of a Divisional Court upon any question which, in the opinion of the Board, is a question of law.

Stating case for opinion of Appellate Division.

(2) The Divisional Court shall hear and determine such special case and remit the same to the Board with the opinion of the court thereon. R.S.O. 1914, c. 186, s. 46.

Action thereon.

Power of
Lieut.-Gov-
ernor in
Council to
vary or
rescind
orders or
regulations
of the
Board.

46. The Lieutenant-Governor in Council may, at any time, upon petition of any party, person or company interested, all parties interested having been first heard, vary or rescind any order, decision, rule or regulation of the Board, whether such order or decision is made *inter partes* or otherwise, and whether such regulation is general or limited in its scope and application; and any order which the Lieutenant-Governor in Council may make with respect thereto shall be binding upon the Board and upon all parties. R.S.O. 1914, c. 186, s. 47 (1).

APPEALS.

Appeal on
questions of
jurisdiction.

47.—(1) An appeal shall lie from the Board to a Divisional Court upon a question of jurisdiction or upon any question of law, but such appeal shall not lie unless leave to appeal is obtained from the court within one month after the making of the order or decision sought to be appealed from or within such further time as the court, under the special circumstances of the case, shall allow after notice to the opposite party stating the grounds of appeal.

Notice of
appeal.

(2) Upon such leave being obtained the registrar shall set the appeal down for hearing at the next sittings, and the party appealing shall, within ten days, give to the parties affected by the appeal, or the solicitors by whom such parties were represented before the Board, and to the secretary, notice in writing that the case has been so set down; and the appeal shall be heard by such court as speedily as practicable.

Opinion of
court.

(3) On the hearing of any appeal the court may draw all such inferences as are not inconsistent with the facts expressly found by the Board and are necessary for determining the question of jurisdiction or law, as the case may be, and shall certify its opinion to the Board and the Board shall make an order in accordance with such opinion.

Board may
be heard by
counsel.

(4) The Board shall be entitled to be heard, by counsel or otherwise, upon the argument of any such appeal.

Rules of
court as to
cost, etc.

(5) The Supreme Court shall have power to fix the costs and fees to be taxed, allowed and paid upon such appeals, and to make rules of practice respecting appeals under this section, and until such rules are made the rules and practice applicable to appeals from a judge of the Supreme Court to a Divisional Court shall be applicable to appeals under this Act. R.S.O. 1914, c. 186, s. 48 (1-5).

Appeals to
Privy
Council in
certain
cases.

(6) When the matter in controversy exceeds the sum or value of \$4,000 or relates to the duration of a privilege to operate a railway along a highway, or to the construction of an agreement between a railway company and a municipal corporation, or to any demand affecting the rights of the public or to any demand of a general or public nature affect-

ing future rights, an appeal shall lie from the Appellate Division to His Majesty in His Privy Council, but no appeal shall lie to His Majesty in His Privy Council in any other case, except by leave of His Majesty. R.S.O. 1914, c. 186, s. 48 (6), *part*.

(7) No appeal shall lie to His Majesty in His Privy Council, from any decision of the Appellate Division upon an appeal from the Board under *The Assessment Act*. 1916, c. 24, s. 26, *part*. No appeal in certain cases. Rev. Stat. c. 238.

(8) Neither the Board nor any member of the Board shall in any case be liable to any costs by reason or in respect of any appeal or application under this section. Members of Board not liable for costs.

(9) Save as provided in this section and in section 46, Decisions of Board to be final.
(a) every decision or order of the Board shall be final; and,

(b) no order, decision or proceeding of the Board shall be questioned or reviewed, restrained or removed by prohibition, injunction, *certiorari* or any other process or proceeding in any court. R.S.O. 1914, c. 186, s. 48 (7, 8). Not to be questioned by prohibition, etc.

48. The Lieutenant-Governor in Council may at any time refer to the Board, for a report or other action, any question, matter or thing arising, or required to be done in respect of a railway, street railway or public utility, subject to the jurisdiction of the Board, under any general or special Act, and the Board shall without unnecessary delay comply with the Order in Council. R.S.O. 1914, c. 186, s. 49. Reference by Lieutenant-Governor in Council for report.

49.—(1) The costs of and incidental to any proceeding before the Board, except as herein otherwise provided, shall be in the discretion of the Board, and may be fixed in any case at a sum certain or may be taxed. Costs.

(2) The Board may order by whom and to whom any costs are to be paid, and by whom the same are to be taxed and allowed. Taxation.

(3) The Board may prescribe a scale under which such costs shall be taxed. R.S.O. 1914, c. 186, s. 50. Scale.

50.—(1) When the Board, in the exercise of any power vested in it, by any order directs any structure, appliances, equipment, works, renewals, or repairs to be provided, constructed, reconstructed, altered, installed, operated, used or maintained, it may order by what company, municipal corporation or person interested or affected by such order, as the case may be, and when or within what time, and upon what terms and conditions as to the payment of compensation or otherwise, and under what supervision the same shall be provided, constructed, reconstructed, altered, installed, operated, used or maintained. Duty to execute works ordered by Board.

And to pay
expenses
of them.

(2) The Board may order by whom, in what proportion and when, the cost and expenses of providing, constructing, reconstructing, altering, installing and executing such structures, equipment, works, renewals, or repairs, or of the supervision, if any, or of the continued operation, use or maintenance of the same, or of otherwise complying with such order shall be paid. R.S.O. 1914, c. 186, s. 51.

INQUIRIES.

Board may
order
inquiries.

51.—(1) The Board may appoint or direct any person to make an inquiry and report upon any application, complaint or dispute before the Board, or upon any matter or thing over which the Board has jurisdiction.

(2) The Board may order by whom and in what proportion the costs and expenses incurred in making such inquiry and report shall be paid, and may fix the amount of such costs and expenses. R.S.O. 1914, c. 186, s. 52.

Powers
respecting
inquiries.

52. The Board, inspecting engineer, or person appointed under this Act to make any inquiry or report may—

Entry.

(a) enter upon and inspect any place, building, or works, being the property or under the control of any company, the entry or inspection of which appears to it or him requisite;

Inspection.

(b) inspect any works, structure, rolling stock or property of the company;

Attendance
of witnesses.

(c) require the attendance of all such persons as it or he thinks fit to summon, and examine and require answers or returns to such enquiries as it or he thinks fit to make;

Returns.

Production
of docu-
ments, etc.

(d) require the production of all books, papers, plans, specifications, drawings and documents, relating to the matter before it or him;

Oaths.

(e) administer oaths,

Summoning
witnesses
and
enforcing
attendance.

and shall have the like power to summon witnesses and enforce their attendance, and compel them to give evidence and to produce books, papers or things which they are required to produce, as is vested in any court in civil cases. R.S.O. 1914, c. 186, s. 53.

Witness
fees.

53. Every person summoned to attend before the Board or before any inspecting engineer, or person appointed to make inquiry and report, shall, in the discretion of the Board, receive the like fees and allowances for so doing as if summoned to attend before the Supreme Court. R.S.O. 1914, c. 186, s. 54.

ADDITIONAL POWERS OF BOARD.

54. The Board may require any company, person or municipal corporation, subject to its jurisdiction, to adopt such means and appliances and to take and use such precautions as the Board may deem necessary or expedient for the safety of life and property. R.S.O. 1914, c. 186, s. 55.

Adoption of appliances for protection of life, etc.

ENQUIRIES INTO FACTS FOR GOVERNMENT, ETC.

55. The Board shall, when required so to do by the Lieutenant-Governor in Council, the Assembly or any Committee thereof, make, or cause to be made under its supervision, an enquiry into any facts which the Lieutenant-Governor in Council, the Assembly or any such Committee may desire to ascertain before passing upon the propriety of any proposed change in the general railway law, or upon any proposed Bill relating to a municipal corporation or to a railway or street railway company, or to any corporation or person operating or proposing to operate a public utility, and upon the conclusion of such enquiry the Board shall report its opinion thereon. R.S.O. 1914, c. 186, s. 56.

Board to enquire and report on certain matters at request of Government or Legislature.

ANNUAL REPORT OF BOARD.

56.—(1) The Board shall make an annual report, on or before the 31st day of March in each year, to the Lieutenant-Governor, which shall contain,

Annual report.

- (a) a record of its meetings and an abstract of its proceedings during the preceding calendar year;
- (b) a statement of the result of any examination or investigation conducted by it;
- (c) such statements, facts and explanations as will disclose the actual workings of the system of railway transportation in its bearing upon the business and prosperity of Ontario, and such suggestions as to the general railway policy of the Province, of the amendments of its laws, or the condition, affairs or conduct of any railway or street railway as may seem to it advisable;
- (d) such tables and abstracts of all the reports of all the railway and street railway companies as it may deem expedient;
- (e) a statement in detail of its disbursements;
- (f) such other matters as appear to the Board to be of public interest in connection with the persons, companies and railways, subject to this Act; and,

Contents.

(g) such matters as the Lieutenant-Governor in Council directs. R.S.O. 1914, c. 186, s. 57 (1); 1922, c. 68, s. 2.

Laying
report before
Assembly.

(2) The Lieutenant-Governor shall lay the report before the Assembly forthwith if then in session, or if not then in session within fifteen days after the commencement of the next session. R.S.O. 1914, c. 186, s. 57 (2).

Superintend-
ing accounts
of railways
and public
utilities
operated by
municipalities.

57.—(1) The Board shall superintend the system of book-keeping and keeping accounts of the assets, liabilities, revenue and expenditure of all railways, street railways and public utilities which are operated by or under the control of a municipal corporation or a commission appointed by a municipal corporation, and may require from any such municipal corporation or commission such returns and statements as to the Board may seem proper, and may extract from such returns and statements such information as, in the opinion of the Board, may be useful for publication, and may embody such portions of such returns and statements in the annual report of the Board as to it may seem proper.

Enquiry
and report
as to rates
charged by
public
utilities.

(2) The Board may from time to time enquire and report as to whether such railway, street railway, or public utility is operated in such a way that the rates charged in respect thereof are sufficient to pay the debenture debt and interest created in respect thereof, and the cost of operation and maintenance, or whether greater rates are charged than are sufficient for such purposes.

Exception.

(3) This section shall not apply to a municipal corporation or commission as respects a public utility for the development or distribution of electrical power or energy. R.S.O. 1914, c. 186, s. 58.

SECRECY OF PROCEEDINGS.

Publishing
information
without
leave.

58. If any officer or servant of the Board, or any person having access to or knowledge of any return made to the Board, or of any evidence taken by the Board in connection therewith, without the authority of the Board first obtained, publishes or makes known any information, having obtained the same or knowing the same to have been derived from such return or evidence, he shall incur a penalty not exceeding \$500 for such offence and shall also be liable to imprisonment for any term not exceeding six months. R.S.O. 1914, c. 186, s. 59.

Penalty.

ARBITRATION BY THE BOARD IN CASES OF LABOUR DISPUTES.

May arbitrate
labour
difficulties.

59.—(1) A dispute between a railway, street railway or public utility company and its employees may be submitted to the Board for its determination and settlement.

(2) The submission shall be in writing and shall contain a statement of the matters in dispute, and also an agreement to abide by the determination of the Board and to continue in business or at work without a lockout or strike during the investigation. Submission to be in writing.

(3) Upon such submission the Board shall investigate and determine the matters in dispute and shall render its decision within ten days after the completion of the investigation. Duty of Board upon submission.

(4) The proceedings shall, as nearly as may be, be the same as in the case of any other enquiry which the Board is authorized to make, but the Board may regulate the proceedings and the manner of conducting them as to the Board may seem meet. R.S.O. 1914, c. 186, s. 60. Procedure in such cases.

MEDIATION IN CASE OF STRIKE OR LOCKOUT.

60.—(1) Whenever a strike or lockout of the employees of any railway, street railway, or public utility company occurs, or is threatened, the Board shall proceed as soon as practicable to the locality thereof and endeavor by mediation to effect an amicable settlement of the controversy. To mediate in case of strikes.

(2) Wherever there exists any such strike or lockout by reason of which, in the opinion of the Board, the general public is likely to suffer injury or inconvenience with respect to food, fuel, light or power, or the means of communication or transportation, or in any other respect, and the parties to such strike or lockout will not consent to submit the matters in controversy to the Board, the Board, after having first endeavoured to effect a settlement by conciliatory means and having failed, may proceed of its own motion to make an investigation of all facts bearing upon such strike or lockout, and shall make public its findings with such recommendations to the parties as, in its judgment, will contribute to a fair and equitable settlement of their differences, and in the prosecution of such enquiry the Board shall have all the powers conferred upon it by section 52. R.S.O. 1914, c. 186, s. 61. Enquiry into cause of dispute and suggesting terms of settlement.

FEEES TO BE CHARGED AND COLLECTED BY THE BOARD.

61.—(1) The Board may charge and collect such fees, as to it may seem proper for all copies of documents, maps or plans, and all certificates as to the same. Fees for copies, certificates, etc.

(2) All fees charged and collected by the Board shall be paid over quarterly, accompanied by a detailed statement thereof, to the Treasurer of Ontario. R.S.O. 1914, c. 186, s. 62. Payment over to Province.

Fees on
orders of
Board to be
paid in
stamps.

62. There shall be paid in law stamps upon every order made by the Board such sum as it may direct, regard being had to the time occupied by the Board and its officers and the expense occasioned to the Province in the matter, and such law stamps shall be provided in the first instance by the applicant for such order, and such sum shall be a debt due by the applicant to His Majesty, and a summary order may be made for payment thereof by the Board, and the order may be made an order of the Supreme Court. R.S.O. 1914, c. 186, s. 63.

CHAPTER 226.

The Municipal Electric Railway Act.

1. In this Act,Interpreta-
tion.

- (a) "Association" shall mean "municipal electric rail- "Association."
way association";
- (b) "Commission" shall mean "Hydro-Electric Power "Commission."
Commission of Ontario";
- (c) "Corporation" "corporations" shall mean a muni- "Corporation."
cipal corporation or municipal corporations other
than the municipal corporation of a county;
- (d) "Trust Corporation" shall include "trust com- "Trust
pany." 1922, c. 69, s. 2. Corporation."

2. On the request expressed by resolution of the corpora- Investigation
tions of two or more municipalities situate in any locality in and report by
which electrical power or energy may be supplied by the Commission.
Commission under *The Power Commission Act*, the Commis-
sion as the agent of such corporations and at the expense of Rev. Stat.
such corporations, may enquire into, examine, investigate c. 57.
and report upon,—

- (a) the cost of constructing, equipping and operating
an electric railway in such locality including a sum
for working capital and a sum to cover any prob-
able loss by discount on the sale of the bonds of
the association;
- (b) the municipalities which will be served by such rail-
way;
- (c) the population of each of such last mentioned muni-
cipalities as shown by the last enumeration thereof
by the assessors;
- (d) an estimate, including the rates and fares proposed
to be charged, of the probable revenue from the
railway;
- (e) the practicability of the undertaking and its econo-
mic value to the locality to be served by it. 1922,
c. 69, s. 3.

Agreement
among cor-
porations for
construction
and operation.

3.—(1) Such corporations may enter into an agreement (Form 1), with each other, for the construction, equipment and operation of an electric railway to be operated by electrical power or energy supplied by the Commission.

What agree-
ment shall
set out.

(2) The agreement shall provide for,—

- (a) the location of the line of railway;
- (b) the character of the construction and of the equipment to be furnished;
- (c) the proportions in which the cost of construction and equipment, and the working capital of the railway shall be borne by each corporation;
- (d) the issuing of debentures by the corporations and their deposit with a trust corporation as collateral security for any bonds which may be issued by the association to meet the cost of construction and equipment of the railway and to provide working capital therefor;
- (e) the terms and conditions on which electrical power or energy shall be supplied by the Commission for the operation of the railway;
- (f) the construction and equipment of the railway either by the association or by the Commission;
- (g) the entrustment of the management and operation of the railway to the association to be appointed or elected as hereinafter provided.

What agree-
ment may
set out.

(3) The agreement may provide for,—

- (a) the construction of the railway upon any right of way acquired by the Commission for the transmission of electrical power or energy under *The Power Commission Act*, and the amount chargeable to the railway by way of rental or otherwise for the use of such right of way;
- (b) the acquiring by purchase or lease of any steam, electric or street railway situate within one or more of such municipalities or any part or parts of any steam, electric or street railway which are situate within one or more of such municipalities and are capable of forming part of the proposed railway system for the service of such municipalities, or the obtaining of running rights over the same;
- (c) the extension of the railway into any adjacent municipality under an agreement to be made between the association and the corporation of such municipality with the approval of the corporations parties to the agreement. 1922, c. 69, s. 4.

Rev. Stat.
c. 57.

4. Before the submission of the by-law to the electors as provided in section 6 the corporations shall without the assent of the electors enter into an agreement with the Commission, conditioned on the assent of the electors of each of the municipalities being obtained to the agreement mentioned in section 3,—

Agreement with Commission as to certain matters.

- (a) for the supply by the Commission of the electrical power or energy required for the operation of the railway; and,
- (b) for the construction and equipment of the railway and any extension thereof by the Commission, if construction and equipment is to be by the Commission; and
- (c) for the construction of the railway upon any right of way as set out in subsection 3 of section 3. 1922, c. 69, s. 5.

5.—(1) Except where otherwise expressly provided, the provisions of this Act relating to the construction of a railway and to the equipment, maintenance and operation of it shall apply to the purchase of a railway or any part or parts thereof and the provisions of this Act relating to maintenance and operation shall apply to a railway or any part or parts thereof leased.

Provisions as to construction to apply to purchase.

(2) Where a steam railway or part thereof is purchased or leased it shall be operated by electrical power or energy supplied by the Commission under *The Power Commission Act*. 1922, c. 69, s. 6.

Operation by electrical power. Rev. Stat. c. 57.

6.—(1) The council of each of the corporations interested shall submit to the vote of the electors qualified to vote on money by-laws, a by-law approving of the agreement and directing its execution, and if a majority of the electors voting thereon vote in favour of the by-law, the council shall pass the same and the agreement shall be executed as directed by the by-law.

Submission of by-law approving of agreement.

(2) The by-law shall not be voted upon by the electors until the by-law and agreement have been published in the manner provided by *The Municipal Act* in the case of money by-laws, at least once a week for four successive weeks. 1922, c. 69, s. 7.

Publication of by-law and agreement. Rev. Stat. c. 233.

7. The by-law submitted to the electors shall recite,—

Recitals in by-law.

- (a) the estimated cost of the construction and equipment of the railway including a sum for working capital;
- (b) the portion of such cost to be borne by the corporation;

- (c) the total annual amount estimated to be required for the maintenance and operation of the railway and for sinking fund charges and interest;
- (d) the portion of such amount to be borne by the corporation;
- (e) the estimated probable revenue from the railway. 1922, c. 69, s. 8.

Case of any corporation failing to pass by-law and execute agreement.

8.—(1) Where any corporation or corporations named as party or parties to the agreement have failed to pass the necessary by-law and to execute the agreement, and the amount for which such corporation or corporations would be liable under the agreement does not exceed fifteen per centum of the estimated cost of the construction and equipment of the railway and of the amount to be provided for working capital and the remaining corporations, parties to the agreement, have by resolution of their respective councils, expressed the desire to proceed with the undertaking notwithstanding the failure of such first-mentioned corporation or corporations to execute the agreement, the association or the commission, as the case may be, may proceed with the construction and equipment of the railway, and in such case the corporations which have executed the agreement shall without the assent of the electors deposit with the trust corporation additional debentures to the amount required to replace the debentures which would have been deposited by the first-mentioned corporation or corporations in the proportions in which they are liable under the agreement to contribute to the cost of the construction and equipment of the railway and to working capital therefor.

Railway facilities need not be provided.

(2) Until a corporation has executed the agreement and deposited debentures with the trust corporation as required by this Act the association or the Commission, as the case may be, shall not be bound to construct, equip, maintain or operate within the limits of the municipality any works provided for by the agreement, except such as may be necessary for the construction and equipment of the railway in passing through the municipality the corporation of which has failed to pass the necessary by-law and to execute the agreement to and from municipalities the corporations of which have executed the agreement and deposited debentures to the amounts stated therein. 1922, c. 69, s. 9.

Meeting to elect association.

9.—(1) As soon as practicable after the by-laws and agreements have been approved of by the electors and the agreements executed the head of the council of that corporation which by the agreement is liable to contribute the largest sum to the cost of the construction and equipment and working capital of the railway shall by notice to each corporation fix a time and place for a meeting of the representatives of the corporations to elect the members of a municipal electric

railway association for the construction, equipment and operation or the operation only of the railway as the case may be, and a meeting for the election of a successor or successors shall be called in like manner.

(2) The council of each corporation shall by resolution appoint one of its members as its representative at such meeting, and such corporation shall be bound by the action of such representative at the meeting.

Appointment of representative.

(3) The representatives shall appoint one of themselves to preside at the meeting and another person, not a representative, to act as secretary.

Chairman and secretary.

(4) The association shall consist of five members elected or appointed as hereinafter provided and each member shall hold office for three years and until his successor is elected or appointed.

Number of members and term of office.

(5) Each corporation which is liable under the agreement to contribute not less than twenty-five per centum of the cost of the construction and equipment and working capital of the railway shall be entitled to nominate and elect one member of the association, and a second member where it is liable to contribute not less than fifty per centum of such cost, and such member or members shall be elected by by-law of the council.

Corporation contributing certain percentages entitled to elect one or two members.

(6) The voting power of each corporation for the election of the members other than those elected under subsection 5 shall be as follows:

Voting power.

One vote where the contribution of the corporation to the estimated cost does not exceed	\$250,000
Two votes where it exceeds \$250,000 but does not exceed	\$500,000
Three votes where it exceeds \$500,000 but does not exceed	\$1,000,000
and one additional vote for each additional \$1,000,000 or fraction thereof which it is liable to contribute to such estimated cost.	

(7) A majority in number and votes of the representatives of the corporations shall be necessary in order to elect the members of the association or the remaining members thereof in the case provided for by subsection 5.

Majority in number and votes necessary to elect.

(8) Where the corporations fail to elect the full number of members of the association under the provisions of the preceding subsections, then the representatives of the corporations shall nominate one or more persons to complete the membership of the association, such nominations to be made by not less than twenty-five per centum of the representatives

Nominations in case of failure to elect and appointment by Lieut.-Gov. in Council.

and twenty-five per centum of the votes of the representatives of the corporations, and the names of the persons so nominated shall be set out in a resolution of the meeting, certified by the chairman and the secretary of the meeting and submitted to the Lieutenant-Governor in Council and thereupon the Lieutenant-Governor in Council may appoint from such nominees the person or persons to complete the membership of the association.

**Incorporation
of association.**

(9) The members so elected or appointed shall be a body corporate under the name of "The (*name of railway*) Municipal Electric Railway Association."

Vacancies.

(10) When and so often as a vacancy occurs in the office of a member of the association by death, resignation, or any other cause the corporation in the case provided for by subsection 5, shall appoint, and in other cases the representatives of the corporations shall elect, in the manner provided by this section another person to fill the office for the remainder of the term. A member of the association may resign his office by filing a notice thereof with the secretary of the association.

**Member of
council not
eligible.**

(11) No member of the council of any of the corporations shall be eligible for appointment as a member of the association.

**Appointment
of chairman
and vice-
chairman.**

(12) The association at its first meeting shall appoint one of the members as chairman and another as vice-chairman, and a majority of the members shall form a quorum.

Salaries.

(13) The chairman, the vice-chairman and each of the other members of the association may be paid such salary or remuneration as may be fixed by the agreement, or as may be agreed upon from time to time by a resolution of the councils of a majority of the corporations and in case no salary or remuneration is so fixed or agreed upon, the chairman shall be paid a salary of \$4,000, the vice-chairman \$3,000, and each of the other members \$2,000 yearly by the association.

**Annual
report of
association
to council
of each cor-
poration.**

(14) Immediately after the close of each calendar year, the association shall prepare and report to the council of each of the corporations interested and publish a complete, audited and certified statement of its affairs including revenue and expense account, balance sheet and profit and loss statement, and such statement shall be accompanied by a general report of the operations of the association during the year and a certificate from a competent engineer as to the physical condition of the railway and its equipment and as to the adequacy and sufficiency of the funds set apart for any renewals and replacements. 1922, c. 69, s. 10.

**Appointment
of trust
corporation.**

10. The association shall appoint a trust corporation with which the debentures of the corporations shall be de-

posited as required by this Act and shall notify each of the corporations of the appointment. 1922, c. 69, s. 11.

11.—(1) Each of the corporations shall issue and deposit with the trust corporation named by the association, debentures to the amount apportioned as its share of the cost of the construction and equipment and of working capital of the railway and such debentures shall be payable at the expiration of forty-four years from the date of the agreement and bear interest at the rate of four and one-half per centum per annum payable semi-annually.

Issue and deposit of debentures with trust corporation.

(2) Each of the corporations shall also from time to time thereafter upon the requisition in writing of the association and in the proportions fixed by the agreement, issue and deposit with the trust corporation such further debentures payable at the same time and bearing the same rate of interest as may be necessary to permit the association to raise the moneys,

Issue and deposit of further debentures.

(a) to cover any additional costs above estimates of such construction and equipment and for working capital of the railway;

(b) for the construction and equipment and working capital of any extension of the railway if the agreement provides for extensions;

(c) for the construction of branch lines, sidings, permanent works and betterments and of additional equipment, in all not exceeding ten per centum of the estimated cost of the construction and equipment and the working capital of the railway as fixed by the agreement;

(d) to cover any loss by discount on the sale of the bonds of the association.

(3) The debentures so issued shall be held by the trust corporation as collateral security for all bonds issued by the association to meet the cost of construction and equipment and for working capital of the railway, but whenever interest upon the bonds issued by the association as hereinafter authorized shall be paid by the association the corresponding interest coupons attached to the debentures deposited by the corporations with the trust corporation shall be delivered up by the trust corporation for cancellation to all such of the corporations as shall not be in default in respect of their obligations to and agreements with the association. 1922, c. 69, s. 12.

Debentures to be collateral security to bonds of association.

12.—(1) The association may raise money for the construction and equipment and for working capital of the railway by the issue for and on behalf of the association of

Bonds of association.

bonds payable at the expiration of forty-four years from the date of the agreement and bearing interest at the rate of four and one-half per centum per annum payable semi-annually.

Issue of further bonds.

(2) The association may also from time to time issue further bonds payable at the same time and bearing interest at the said rate,—

(a) to cover any additional costs above estimates of such construction and equipment and for working capital of the railway;

(b) for the construction and equipment and working capital of any extension of the railway if the agreement provides for extensions;

(c) for the construction of branch lines, sidings, permanent works and betterments and for additional equipment in all not exceeding ten per centum of the estimated cost of the construction and equipment and the working capital of the railway as fixed by the agreement;

(d) to cover any loss by discount on the sale of the bonds of the association.

Bonds not to exceed debentures and to rank *pari passu*.

(3) All bonds issued by the association shall rank *pari passu* and shall bear on their face the corporate name of the association and the amount of the bonds which may be issued by the association shall not at any time exceed the amount of debentures deposited by the corporations with the trust corporation as collateral security for such bonds.

Mortgage deed securing bonds.

(4) The association shall secure such bonds by a deed of trust creating a charge in favour of the trust corporation on the railway and all the assets, rights, privileges, revenue, works, property and effects belonging thereto or held in connection therewith, and also upon the debentures of the corporations deposited with the trust corporation as collateral to the bonds of the association.

Bonds first charge on railway with exceptions.

(5) Subject to the payment of the working expenditures of the railway and to any prior charge or encumbrance in the case of a railway which has been purchased the bonds of the association shall be a first preferential claim and charge upon the railway and all the assets, rights, privileges, revenue, works, property and effects belonging thereto or held or used in connection therewith.

Enforcement of payment of bonds.

(6) No proceeding shall be taken to enforce payment of such bonds or of the interest thereon except through the trust corporation under the provisions of the said deed of trust.

Raising of sinking fund delayed for certain period.

(7) The bonds shall be payable at the same time as the debentures of the corporations but it shall not be necessary for the association to raise or provide any sinking fund for the retirement of the bonds until after the expiration of three

years from the date of the commencement of the operation of the railway or until after the expiration of five years from the date of the agreement whichever shall be the shorter period.

(8) When bonds issued by the association shall be purchased out of sinking fund and cancelled the corporations shall be relieved by the trust corporation of liability in respect of the debentures deposited by them with the trust corporation to a similar extent, and when convenient so to do debentures of the corporations in such amounts may be delivered up to them by the trust corporation for cancellation.

Relief of corporations where bonds purchased out of sinking funds.

(9) During the course of construction and equipment of the railway the association may in lieu of selling its bonds raise money from time to time to meet the cost of such construction and equipment by borrowing upon the bonds authorized to be issued by it, and the association may hypothecate such bonds or any part thereof for such purposes. 1922, c. 69, s. 13.

Hypothecation of bonds.

13. All debentures of the corporations and all bonds of the Commission shall be issued repayable on the sinking fund plan. 1922, c. 69, s. 15.

Sinking fund plan only.

14. Where a railway or any part thereof is purchased and any bonds, debts or obligations shall stand charged against or upon it the association may assume such bonds, debts and obligations as part of the purchase price to be paid for such railway or part thereof. If the association shall assume and agree to pay such bonds or debts the corporations shall deposit with the trust corporation in the proportions fixed by the agreement debentures to the amount of the debts assumed, bearing the same rate of interest and maturing at the same time as other debentures of the corporations deposited or to be deposited with the trust corporation. 1922, c. 69, s. 16.

Assumption of bonded debt in case of railway purchased.

15. The association shall so regulate and fix all tolls, tariffs of tolls and fares for the carriage of passengers and freight that the revenue derived therefrom in each year will be sufficient to provide for,—

Requirement as to fixing tolls and fares.

- (a) the cost of maintenance and operation of the railway including the cost of the supply of electrical power or energy and the cost of administration;
- (b) the cost of making such renewals and replacements as are properly chargeable to revenue;
- (c) the payment of the interest on and in due course of the principal of any mortgage, encumbrance or debt forming a lien or charge on the property and works of a railway purchased under the provisions of this Act; and

- (d) the payment of the interest on and the formation by the association of a sinking fund sufficient to retire all outstanding bonds of the association at maturity. 1922, c. 69, s. 17.

Application
of surplus
revenue.

16.—(1) If in any year such revenue is more than sufficient to satisfy the costs, charges and payments mentioned in section 15, the association may pay over the surplus to the corporations, parties to the agreement, in the proportions fixed thereby or may apply such surplus to meet the cost of the construction of branch lines, sidings, permanent works, and betterments, and of additional equipment or may retain such surplus as a reserve fund to meet the cost of future operation or to meet contingencies.

Corporations
to meet deficits
in operations.

(2) If in any year such revenue and any accumulated surplus revenue from prior periods is insufficient to satisfy the costs, charges and payments mentioned in section 15, the association shall within one month following the termination of such year make demand upon the corporations to provide and pay over to the association such sum as shall be necessary to make up the deficiency and the council of each of the said corporations shall forthwith raise and pay over to the association its proportion, as fixed by the agreement, of such sum, together with interest thereon at the rate of six per centum per annum from the date of demand for payment thereof by the association.

Apportion-
ment by
association.

(3) The association shall from time to time adjust and apportion the amounts payable to the corporations under subsection 1 or by the corporations under subsection 2 and such adjustment and apportionment shall be final and binding upon the corporations. 1922, c. 69, s. 18.

Investment of
sinking funds.

17. All sinking funds shall be paid over to and be invested by the trust corporation in bonds of the Dominion of Canada or Province of Ontario or in bonds of the association which prior thereto had been sold by the association and all bonds of the association so purchased out of sinking fund shall be cancelled by the trust corporation. 1922, c. 69, s. 19.

Borrowing
powers—de-
bentures not
to be counted.

18. Any debentures issued under the authority of this Act shall not be included in ascertaining the limit of the borrowing powers of the corporations as prescribed by *The Municipal Act* or by any other general or special Act. 1922, c. 69, s. 20.

Rev. Stat.
c. 233.

Extension
into adjacent
municipality.

19.—(1) Where the agreement so provides the association with the consent expressed by by-law of each of the corporations, parties to the agreement, which may be passed without the assent of the electors may enter into an agreement with the corporation of any adjacent municipality for the extension of the railway into such adjacent municipality.

(2) The council of such adjacent municipality shall submit, Submission to electors. to the vote of the electors qualified to vote on money by-laws, a by-law approving of the agreement and directing its execution as required in the case of a by-law and agreement for the construction and equipment of a railway.

(3) The provisions of this Act relating to the construction, Application of Act to extensions. equipment and operation of the railway shall apply to the construction, equipment and operation of such extension.

(4) All debentures of the corporations and all bonds of the association issued for the construction, equipment and working capital of such extension shall be payable at the same time as the debentures and bonds issued for the construction and equipment of the railway. Payment of debentures and bonds.

(5) After the corporation of such adjacent municipality has deposited debentures with the trust corporation to meet its portion of the cost of the construction, equipment and of the working capital of the extension it shall be deemed to be a party to the agreement for the construction and equipment of the railway. Adjacent municipality as party to original agreement. 1922, c. 69, s. 21.

20.—(1) *The Hydro-Electric Railway Act, 1914*, and 1914, c. 31. amendments thereto so far as they are applicable shall remain in force and effect as they stood on 1st June, 1922, with respect to the following railways,—

- (a) The Sandwich, Windsor and Amherstburg Railway Sandwich, Windsor and Amherstburg Ry. and the Windsor and Tecumseh Electric Railway Windsor and Tecumseh Ry. acquired and operated by The Hydro-Electric Power Commission of Ontario for certain municipal corporations under the contracts confirmed by sections 8 and 9 of *The Hydro-Electric Railway Act, 1920*; 1920, c. 57.
- (b) The Guelph Radial Railway acquired and operated by the Commission under the agreement confirmed by *The Guelph Railway Act, 1921*; Guelph Radial Ry. 1921, c. 22.

and all by-laws passed and agreements made with respect to the said railways shall remain in full force and effect. 1925, c. 57, s. 2 (1), *part*.

21. The association or the Commission may construct and equip or the association may construct, equip, maintain and operate the railway as provided by the agreement and for that purpose, subject to the provisions of section 23, the association or the Commission shall have and may exercise all the powers, rights, immunities and privileges of a company incorporated by special Act for the construction and operation of a railway under *The Railway Act*, so far as the same are applicable. Powers as to construction and operation. Rev. Stat. c. 224. 1922, c. 69, s. 22.

Provision for
operation by
Commission.

22.—(1) The association may enter into an agreement with the Commission for the operation of the railway by the Commission as its agent, for a period not exceeding five years but such agreement may be renewed from time to time for further periods not exceeding five years at any one time.

Books and
accounts to
be kept.

(2) Where such an agreement is made the Commission shall maintain separate and distinct books and accounts with respect to the operation of the railway and all moneys received by it in connection with such operation shall be kept in a separate bank account and shall not be merged or mixed with the funds of the Commission derived from any other sources. 1922, c. 69, s. 23.

Expropriation
of land.

23.—(1) Where land is required for any of the purposes for which land may be acquired or expropriated under *The Railway Act* the association or the Commission, as provided by the agreement, shall in respect thereof have the powers and shall proceed in the manner provided by *The Public Works Act*, where the Minister of Public Works takes land or property for the use of Ontario and the provisions of the said last mentioned Act shall, *mutatis mutandis*, apply.

Rev. Stat.
c. 224, 52.

Compensation.

(2) Where compensation would be payable upon the exercise of any powers by the association or the Commission under *The Railway Act* the same shall be determined in the manner provided by *The Public Works Act*. 1922, c. 69, s. 24.

Provisions of
Rev. Stat.
c. 224, how
far applicable.

24. Sections 65 to 68 and section 210 of *The Railway Act* shall not apply to the association or the Commission or to any railway constructed, purchased or operated under the authority of this Act, but the construction, equipment and operation of such railway by the association or Commission shall be in accordance with the provisions of *The Railway Act* except where they are inconsistent with the provisions of this Act. 1922, c. 69, s. 25.

No action
against
Commission
without fiat of
Att'y-Gen.

25. No action or prosecution shall be brought against the Commission or any member thereof or any of its officers without the consent of the Attorney-General of Ontario for anything done under this Act, but this shall not apply to an association. 1922, c. 69, s. 26.

Province or
Commission
not liable
for errors
in estimates.

26. The Province shall not nor shall the Commission, or any member thereof incur any liability by reason of any error or omission in any estimates, plans or specifications prepared or furnished by the Commission. 1922, c. 69, s. 27.

Corporation
not to sell
any railway
without assent
of electors.

27.—(1) Notwithstanding anything contained in any general or special Act heretofore passed by this Legislature, a corporation shall not sell or otherwise dispose of

any electric railway or street railway owned by it or of which it has acquired control by foreclosure or other proceedings or under the provisions of any special Act, unless and until a by-law authorizing such sale or other disposal has been submitted to and has received the assent of the electors qualified to vote on money by-laws according to the provisions of *The Municipal Act*.

Rev. Stat.
c. 233.

(2) Every agreement or arrangement entered into by a corporation in violation of subsection 1 shall be null and void. 1922, c. 69, s. 28.

Agreement
in violation
of subs. 1
to be void.

28. Such variations, additions or alterations as are in conformity with the provisions of this Act may be made to the agreement set out as Form 1 to this Act with the approval of the Lieutenant-Governor in Council. 1922, c. 69, s. 30.

Variations
in form of
agreement.

FORM 1.

(Referred to in section 3.)

THIS AGREEMENT made this day of 192 .
Between
The Municipal Corporations of
hereinafter called the "Corporations"

In this Agreement "Association" means "Municipal Electric Railway Association" elected or appointed as provided by *The Municipal Electric Railway Act*.

WHEREAS pursuant to *The Municipal Electric Railway Act*, the Hydro-Electric Power Commission of Ontario hereinafter called the "Commission" at the request of the Corporations and after enquiry, examination and investigation into the various matters set out in section 2 of *The Municipal Electric Railway Act*, have reported to the Corporations that

- (a) The cost of constructing, equipping and operating an electric railway in such municipalities including a sum for working capital and a sum to cover any probable loss by discount on the sale of the bonds of the Association will be
- (b) The proportion of the capital cost to be borne by each of the Corporations is as set out in Schedule "B" attached hereto
- (c) The population of each of such municipalities as shown by the last enumeration thereof by the assessors is
- (d) The estimated probable revenue from the railway will be

AND WHEREAS the Corporations have determined that it is in the interests of the inhabitants of such municipalities that the railway should be constructed, equipped and operated over the routes

laid down in Schedule "A" attached hereto. *Where construction and equipment is by the Commission insert the following recital:* (And whereas the Corporations have determined that the railway should be constructed and equipped by the Commission and the Commission has agreed with the Corporations to construct and equip the railway but upon the express condition that the Commission shall not be in any way liable for any errors or omissions in the estimates, plans or specifications or for any financial or other obligations or loss whatsoever by virtue of the construction and equipment of the railway).

Where construction and equipment are by the Association insert the following recital; (And whereas it has been determined by the Corporations that the railway should be constructed and equipped by the Association). And whereas the electors of each of the Corporations have assented to by-laws authorizing the Corporations to enter into this Agreement for the construction and equipment of the railway as laid down in Schedule "A."

NOW THIS AGREEMENT WITNESSETH that each of the Corporations covenants and agrees with the other as follows;

1. The railway shall be constructed and operated over the routes laid down in Schedule "A".

2. The character of the construction and equipment of the railway shall be as far as possible first class, modern and the standard and so as to give the best service and accommodation possible, having regard to the districts to be served.

3. To bear its share of the cost of construction and equipment and the amount to be provided for working capital of the railway by each Corporation as set out in Schedule "B".

4. To issue and deposit with the Trust Corporation named by the Association, debentures to the amount set out in Schedule "B" as its share of the cost of the construction and equipment and of working capital of the railway, such debentures to be payable at the expiration of forty-four years from the date of this Agreement and to bear interest at the rate of four and one-half per cent. per annum, payable semi-annually

5. Upon the requisition in writing of the Association and in the proportions fixed by this Agreement to issue and deposit with the Trust Corporation such further debentures payable at the same time and bearing the same rate of interest as may be necessary to permit the Association to raise the moneys.

(a) To cover any additional costs above estimates of such construction and equipment and for working capital of the railway;

(b) For the construction and equipment and working capital of any extension of the railway (*This clause to be struck out if Agreement does not provide for extensions*).

(c) For the construction of branch lines, sidings, permanent works and betterments and for additional equipment in all not exceeding ten per cent. of the estimated cost of the construction and equipment and the working capital of the railway as fixed by this agreement;

(d) To cover any loss by discount on the sale of the bonds of the Association.

6. Electrical power or energy for the operation of the railway shall be supplied by the Commission in accordance with the agreement made with the Commission and the obligations of the Corporations thereunder shall be carried out by the Association

(Here set out a synopsis of the terms and conditions of the Agreement including the amount of power or energy to be supplied and the price to be paid and the terms of payment).

7. The railway shall be constructed and equipped by the
(Association)
(Commission) *as the case may be.*

8. The management and operation of the railway shall be and are hereby entrusted to an Association to be elected or appointed as provided by *The Municipal Electric Railway Act*.

Where the railway is to be constructed on any right of way of the Commission add

9. The railway shall be constructed on the following right of way acquired by the Commission for the transmission of electrical power or energy.

(Here describe right of way in general terms but so as to identify it) in accordance with the agreement made with the Commission under which a rental of \$ _____ is to be paid to the Commission annually. The said rental shall be paid to the Commission by the Association on behalf of the Corporations.

If the Corporations determine that provision should be made for extensions of the railway into any adjacent municipality add

10. The railway may be extended into any adjacent municipality under an agreement to be made between the Association and the Corporation of such municipality with the approval of the Corporations parties to this agreement.

Where the Corporations determine to acquire by purchase any steam, electric or street railway situate within one or more of such municipalities, or any parts of any steam, electric or street railway which are situate within one or more of such municipalities and capable of forming part of the proposed railway system appropriate recitals should be added to the agreement setting out the report of the Commission as to the purchase price and as to the other matters required in a report from the Commission in the case of the construction and equipment of a railway and the provisions of the agreement relative to construction and equipment of the railway should be altered or additions should be made thereto to cover the purchase of the railway or of any part or parts thereof.

Where the Corporations determine to lease or obtain running rights over any such railway or any such part or parts of a railway as above set out add

11. The railway or that part or those parts of the railway (describe the part or parts) as the case may be shall be leased by the Association upon the following terms and conditions (here set out the terms and conditions) and upon such other terms and conditions as the Association may deem proper and the Association shall execute the said lease and carry out its provisions on behalf of the corporations.

Where the Corporations determine to obtain running rights as above set out add

12. The Association shall enter into an agreement with the Railway Company to obtain running rights over the Railway or over the following part or parts of the Railway (*describe the part or parts*) on the following terms and conditions (*here set out terms and conditions*).

13. To keep, observe and perform the covenants provisoes and conditions set forth in this agreement intended to be kept, observed and performed by the Corporations and to execute such further or other documents and to pass such by-laws as may be requested by the Commission or the Association for the purpose of fully effectuating the object and intent of this agreement and of carrying out the provisions of *The Municipal Electric Railway Act*.

14. To perform and carry out all the duties and obligations cast upon it by *The Municipal Electric Railway Act*, with reference to the construction, equipment, maintenance and operation of the railway or of any extension of it.

15. Should the Corporation fail to perform any of its duties or obligations to the Association under this Agreement or under the said Act the Association may in addition to all other remedies and without notice discontinue the service of the railway to such Corporation until the said duty or obligation has been fulfilled and no such discontinuance of service shall relieve the Corporation in default from the performance of such duty or obligation.

In witness whereof each of the Corporations has affixed its corporate seal and the hands of its proper officers.

1922, c. 69, Form 1.

CHAPTER 227.

The Telephone Act.

1. In this Act,

Interpre-
tation.

- (a) "Board" shall mean Ontario Railway and Municipal Board; 1918, c. 31, s. 2 (a). "Board."
- (b) "Company" shall include an incorporated company, municipal corporation, commission, association, partnership, individual or aggregation of individuals owning, controlling or operating, or who may propose to own, control or operate a telephone system or line within Ontario; 1918, c. 31, s. 2 (b); 1924, c. 52, s. 1. "Company."
- (c) "Cost of establishing and maintaining any system or extension thereof," shall mean not only the cost of constructing, erecting and installing the system, but also the cost of such improvement or strengthening of it, or any extension thereof, as may be necessary or expedient by the addition of switchboard equipment, poles, cables, wires, cross-arms, insulators and other appliances, or by the application of such work or labour as may be deemed necessary or expedient by the Board or the initiating municipality, or the commissioners, as the case may be, to enable it to give the subscribers efficient telephone service; 1918, c. 31, s. 2 (i). "Cost of establishing, etc., system."
- (d) "Extension" and "Extended" shall include and apply to any works necessary for furnishing telephone service to any person by an existing telephone system; "Extension," "Extended."
- (e) "Initiating municipality" shall mean a municipal corporation which has established or proposes to establish a telephone system under this Act; "Initiating municipality."
- (f) "Maintenance" and "Maintaining" shall include repairs, switchboard operation, superintendence and management of the system; "Maintenance."
- (g) "Special Act" shall mean and include any Act of the Legislature of the Province of Ontario authorizing the construction of a telephone system or line and with which this Act is incorporated, "Special Act."

and also letters patent incorporating a telephone company, and supplementary letters patent relating to such a company issued under the authority of any Act of this Legislature; 1918, c. 31, s. 2 (c-f).

"Subscriber."

- (h) "Subscriber" shall mean and include every person who, being a landowner, signs a petition to the council of a municipality praying for the establishment or extension of a telephone system which is afterwards established or extended pursuant to such petition, or upon whose property an annual special rate is or may be levied and collected for the purpose of paying the cost of establishing and maintaining such system or any extension thereof, or any reconstruction, replacement or alteration of the same or any part thereof and also a person who having been a subscriber as last above defined has fully paid all annual special rates in respect of the establishment of a system or of its extension and the cost of maintenance during the period for which debentures have been issued to pay the cost of such establishment or extension, and continues thereafter to take telephone service from such system on the basis of paying such charges therefor as may be approved by the Board; 1918, c. 31, s. 2 (g); 1924, c. 52, s. 2.

"Subscriber" what to include.

"System."

- (i) "System" shall mean a telephone system established under this or any former Act;

"Toll,"
"Tolls."

- (j) "Toll" and "Tolls" shall include any toll, rate, rental, or charge for the transmission of telephone messages or for the use of telephone instruments, or circuits, or for the supply of telephone service. 1918, c. 31, s. 2 (h, j).

PART I.

Telephone System Operated as a Public Utility.

Establishment and operation of telephone business as public utility.

2.—(1) The corporation of every urban municipality may establish and carry on a telephone business as a public utility, and for the purposes of such business may construct, maintain and operate in, over, under, upon or across the highways, lanes, parks, squares and other public ways, passages and places in the municipality, or in, over, under, upon or across the land of any person therein, an underground or overhead or partly underground and partly overhead telephone system, and do all things necessary or convenient for that purpose including the issue of debentures to meet the cost of the same. 1921, c. 62, s. 2, *part*; 1924, c. 52, s. 3; 1926, c. 51, s. 2.

(2) Any by-law authorizing the issue of debentures, and any by-law authorizing the assumption of any outstanding debentures issued in respect of a system established under Part II which is passed by the council of a municipal corporation in the exercise of the powers conferred by this section or by sections 3 or 4, shall not be valid until it shall have received the assent of the electors qualified to vote on money by-laws as required by *The Municipal Act*. 1924, c. 52, s. 3.

Debentures,
assent of
electors re-
quired.

Rev. Stat.
c. 233.

3. The corporation may for the purpose of establishing or carrying on such business acquire, by purchase or lease or, subject to the provisions of Part II in that behalf, may expropriate any telephone system in the municipality (hereinafter designated the initiating municipality) established under any former or other Act or under Part II. 1921, c. 62, s. 2, *part*; 1924, c. 52, s. 4.

Municipality
may pur-
chase, lease,
or ex-
propriate
existing
telephone
systems.

4. Where a system established under Part II is acquired by a municipality under section 3 the debentures theretofore issued under Part II and then outstanding and unpaid shall cease to be a charge upon the lands of the respective subscribers or any of them and the same as they mature and fall due and the interest upon them shall be met and paid by a rate to be imposed by the corporation upon all the rateable property in the municipality. 1921, c. 62, s. 2, *part*.

Debentures
of acquired
system to
be paid
by munici-
pality.

5. Where parts of any building in the municipality are owned or occupied by different persons the corporation may carry wires to any part of such building, and for that purpose may pass over or through or under the property belonging to any owner, or in the possession of any tenant or occupant. 1921, c. 62, s. 2, *part*.

Right of
passage
where
building
has more
than one
owner or
occupant.

6. The provisions of Part III and Part IV of *The Public Utilities Act* shall, *mutatis mutandis*, apply to a corporation so establishing and carrying on a telephone system and the words "public utility," where they occur in said Parts III and IV, shall include telephone service. 1921, c. 62, s. 2, *part*.

Provisions
of Rev.
Stat. c. 249.
to apply.

7. Where a municipal corporation has heretofore constructed, purchased or acquired or hereafter constructs, purchases or acquires a telephone system under this Part or where such corporation has undertaken the construction, purchase or acquisition of a telephone system, and it appears that the cost of such construction, purchase or acquisition has exceeded or will exceed the amount already provided for that purpose or where it is deemed expedient by the council of such municipal corporation from time to time to construct an extension or extensions or any improvement or improvements of such telephone system, the council may pass a by-law or by-laws for borrowing such further or other sum or

Power of
municipality
to pass
by-law to
borrow
money for
extension
or acquisi-
tion of
system.

Assent of electors not required where by-law is passed by three-fourths vote of council and approved by Board.

When board may approve by-law.

sums as may be necessary to extend, improve or complete such telephone system or for the purchase or acquisition of the same or to meet the cost of extensions or improvements already made to such telephone system; and

(a) The by-law shall not require the assent of the electors if it is passed by a vote of three-fourths of all the members of the council and is approved by the Board; and

(b) Such approval may be given if it is shown to the satisfaction of the Board that the expenditure proposed to be made for any such extension or improvement, or for the completion of such telephone system or such purchase or acquisition is necessary, and that a sufficient revenue or sufficient additional revenue will be derived therefrom to meet the annual payments in respect of such debt and the interest thereon or where it is made to appear to the Board that the net revenue derived from such telephone system justifies the construction of such extension or improvement. 1921, c. 62, s. 2, *part*; 1926, c. 51, s. 5.

Application of certain sections in Parts II, V and VI.

8. Sections 17, 18, 19, 31, 32, 33, 34, 35, 36, 45, 71, 72, 73, 74, 75 and 79 of Part II and Parts V and VI of this Act shall, *mutatis mutandis*, apply to a municipal corporation carrying on a telephone business as a public utility under this Part. 1921, c. 62, s. 2, *part*; 1925, c. 58, s. 5.

Powers of Board.

9. The Board shall have and may exercise in respect of a telephone business established and carried on as a public utility under this Part all powers and authority which it has and may exercise in respect of a system established and carried on under Part II. 1918, c. 31, s. 4.

PART II.

LOCAL MUNICIPAL TELEPHONE SYSTEMS.

Establishment and Extension of Systems.

Petition for establishment of system.

10. A petition signed by not less than ten assessed landowners may be presented to the council of any local municipality praying for the establishment of a telephone system. 1918, c. 31, s. 5.

Petition for extension of system.

11. A petition signed by one or more assessed landowners, may be presented to the council of a local municipality in which a telephone system is established under section 10 praying for an extension of such system so as to serve his or their premises respectively. 1918, c. 31, s. 6.

12. A petition under section 10 or 11 shall set forth such particulars as the Board may require, and a signature after being affixed to such petition shall not be removed therefrom, except with the approval of the Board; provided, however, that no application for such approval shall be considered by the Board after the lapse of six months from the date of the passing of the by-law for the establishment of the system or in the case of a petition for an extension to the system, after the lapse of six months from the date upon which the signature was affixed to such petition. 1918, c. 31, s. 7; 1924, c. 52, s. 5.

Particulars to be stated in petition.

Removal of names from petition.

13. Where the petition for the establishment or extension of a system prays that the debentures of the initiating municipality shall be issued to pay the cost of the work, any additional landowner may, with the permission of the council, or of the commissioners as the case may be, at any time before the passage of the debenture by-law, affix his signature to such petition, and thereupon and thereafter such additional landowner shall have all the rights and be subject to all the obligations of the original signatories to such petition. 1918, c. 31, s. 8.

Adding signatures to petition after presentation to council.

14. The petition shall constitute a valid and binding contract on the part of each person signing the same to repay to the initiating municipality his share of the cost of establishing or extending the system as the case may be, and operating and maintaining the same. 1918, c. 31, s. 9.

Petition to constitute a contract.

15. Upon the receipt of a petition praying for the establishment of a telephone system the council of the initiating municipality may by by-law at the expense of the subscribers, and subject to such conditions as may be set forth in the by-law, provide for the establishment of the system and for the maintenance and operation of the same. 1924, c. 52, s. 6.

By-law for establishment of system.

16. After the establishment of a system the initiating municipality may from time to time, upon the receipt of a petition praying for an extension of the same, construct any extension as may seem expedient and necessary for the purpose of supplying telephone service to the petitioners. 1924, c. 52, s. 7.

Construction of extensions.

17. The council of the initiating municipality may, from time to time extend the system into another municipality with the consent of the council of such other municipality, or with the approval of the Board on the petition of ten assessed landowners of such other municipality. 1918, c. 31, s. 11.

Extension of system into another municipality.

18. The council of the initiating municipality may, with the consent of the Board, extend the system into an unorganized township, and the part of such unorganized township

Extension of system into unorganized township.

into which the system is extended, to be defined by the Board, shall, for the purposes of this Act, be deemed to be annexed to the initiating municipality, and the council and officers thereof shall levy and collect all special rates under this Act and do all acts and perform all duties and be subject to the same liabilities in respect to such part of such unorganized township as, for the purposes of this Act, they may do, perform and are subject to with respect to the initiating municipality. 1918, c. 31, s. 12.

Approval
by Board
of by-law,
plans and
specifica-
tions.

19.—(1) The initiating municipality before proceeding to establish a system, shall furnish to the Board a certified copy of the by-law providing for the establishment of such system, together with such plans, particulars of the cost of the work, and such other information as the Board may require, and no debt shall be incurred for the construction of the system, or for the purchase of material to be used in such construction until the Board shall have approved such by-law. 1918, c. 31, s. 13; 1924, c. 52, s. 8.

General
provisions
relating to
extensions.

(2) The by-law may provide in general terms for the making of extensions to the system from time to time thereafter, and upon the receipt of a petition for an extension the initiating municipality may from time to time construct the same, and if any such extension requires the issue of debentures the by-law authorizing such issue shall recite the making of such extension, and shall adopt and confirm the same. 1924, c. 52, s. 9.

Location of
exchange or
switchboard
by initiat-
ing munici-
pality.

20. The initiating municipality shall, with the approval of a majority of the subscribers present at a special general meeting duly called, determine the location of any exchange or switchboard of the system, and any relocation of the same from time to time. 1918, c. 31, s. 14; 1926, c. 51, s. 4.

Location of
exchange or
switchboard
by Board.

21. In case of the failure to determine the location or relocation of any exchange or switchboard under the next preceding section, the Board may determine the location or relocation of the same. 1918, c. 31, s. 15.

Ownership
of system.

22. Every telephone system established or extended under this Part shall be vested in the initiating municipality in trust for the benefit of the subscribers, and such municipality shall be liable for all the obligations of the system and shall have and may exercise all or any of the powers conferred on municipal corporations by Part I. 1918, c. 31, s. 16.

Borrowing Powers and Debentures.

Issuing
debentures
for cost of
work

23. Where the subscribers or a majority of them, in the petition for the establishment or extension of the system, pray that the payment of the cost of the work be extended over a period not exceeding ten years, and that debentures of the

initiating municipality be issued to pay the cost of the work, the council of the initiating municipality in the by-law providing for such establishment or extension of the system, or in a subsequent by-law, may provide for the issue of debentures payable within ten years from the date of the issue thereof, and that the proceeds of such debentures shall be applied in payment of the cost of establishing or extending the system as the case may be, and for levying a special rate upon the property of the subscribers sufficient to discharge any debt so incurred in equal annual instalments of principal and interest. 1918, c. 31, s. 17.

24. The debentures shall be issued on the credit of the initiating municipality, and it shall not be necessary that the by-law authorizing their issue be submitted for the assent of the electors, but such by-law shall not be valid until approved by the Board. 1918, c. 31, s. 18; 1919, c. 43, s. 2.

25.—(1) The initiating municipality may agree with any bank, person or body corporate for temporary advances to meet the cost of the work until the completion thereof, and may then pass the necessary by-law authorizing the issue of debentures, out of the proceeds of which the temporary advances shall be paid, but the by-law for the issue of debentures shall be passed not later than two years after the passing of the by-law for the establishment or extension of the system as the case may be, and the debentures shall be issued within twelve months after the passing of the by-law authorizing the issue of the same; provided, however, that the Board may extend beyond two years the period within which the by-law for the issuing of debentures may be passed and may extend beyond twelve months the period within which the debentures may be issued, and such extension of time may be granted although the application for the same is not made until after the expiration of such period of two years or twelve months, and in such case the by-law may be passed or the debentures issued within such extended time. 1918, c. 31, s. 19; 1924, c. 52, s. 10.

(2) Any order of the Board heretofore made extending the time for the passing of any such by-law or for the issue of such debentures is confirmed and declared to be legal, valid and binding notwithstanding that the application for such extension was made after the expiration of the period prescribed by this section. 1924, c. 52, s. 11.

26. Where the subscribers, or a majority of them, by petition to the council of the initiating municipality, pray that the payment of the cost of the work be extended over a period exceeding ten years, the Board may authorize the council to provide by by-law that the payment of the debentures to be issued may be extended over a period exceeding

ten years, and in determining the length of such period the Board shall have regard to the character of the construction of such work and its probable durability. Provided, however, that this subsection shall not apply to any system where the sum required to discharge the principal and interest of the debentures and to pay the cost of maintenance does not exceed twelve dollars per year for each subscriber. 1918, c. 31, s. 20.

Reconstruction, replacement or alteration of system.

27.—(1) Where in the opinion of the council of the initiating municipality or the commissioners of a system, as the case may be, it is necessary or expedient to reconstruct, replace or alter the system or any part thereof, and to issue the debentures of the initiating municipality to meet the cost of the same, the council of the initiating municipality may, with the approval of the Board, and without a petition from the subscribers or any of them, pass a by-law authorizing the doing of the work and the issue of debentures for that purpose, and it shall not be necessary that the by-law be submitted for the assent of the electors. 1918, c. 31, s. 21 (1).

Costs, how paid.

(2) The Board shall fix and determine the period within which the debentures to be issued shall be made payable and the landowners who shall defray the cost of such reconstruction, replacement or alteration, and the lands upon and in respect of which the special rate shall be levied to discharge the debenture debt so incurred, with interest. 1918, c. 31, s. 21 (2); 1925, c. 58, s. 2.

Provisions of Act to apply.

(3) The provisions of this Act as to debentures shall apply to debentures issued under this section. 1918, c. 31, s. 21 (3).

Power of initiating municipality to borrow on debentures without assent of ratepayers where issue is approved by the Board.

28. The initiating municipality may with the approval of the Board and without obtaining the assent of the ratepayers, pass by-laws authorizing the issue of debentures to meet the cost of making an extension or extensions to the system for the purpose of furnishing service to persons not being assessed landowners, but before approving of any such by-law the Board shall be satisfied that such extension or extensions is or are necessary and that a sufficient additional revenue will be derived therefrom to meet the annual payments of principal and interest in respect of the debt created by the issue of such debentures. 1921, c. 62, s. 4.

Works ordered by the Board to be deemed extension of system.

29. Where the initiating municipality has been ordered by the Board to construct works under this Act, such works shall be deemed to be an extension of the telephone system of such municipality, and the council of the initiating municipality shall have and may exercise in respect of such works the like powers as are vested in such council by this Act in respect of the construction of an extension of the system and

the issue of debentures to meet the cost of the same, and such powers may be exercised without a petition from the subscribers to the system or any of them. 1918, c. 31, s. 22.

30. Where the debentures of the initiating municipality heretofore issued to pay for the cost of establishing or extending a system are payable within ten years from the date of issue, then, notwithstanding anything in any Act or in the by-law authorizing the issue of such debentures, the council of such initiating municipality may upon the petition of a majority of the subscribers, by by-law provide that a portion or portions of the principal of such debentures to fall due in any year or years may at maturity be liquidated by the issue of new debentures of the municipality, and it shall not be necessary for the municipality to provide by a sinking fund or otherwise for the payment of such portion or portions of the principal so falling due in such year or years, and such new debentures shall be payable at latest within fifteen years from the date of issue of the first-named debentures, and the by-law or by-laws authorizing the issue of such new debentures shall make provision according to law for the payment of the same at maturity with interest, and shall not require the assent of the electors; but no such by-law or by-laws providing for the issue of new debentures shall be passed where the annual special rate levied upon any subscriber is less than twelve dollars, and in no case shall such a by-law take effect until it has been approved by the Board. 1918, c. 31, s. 23; 1926, c. 51, s. 5.

Issue of new debentures for portion of principal.

Purchase and Expropriation of Systems.

31. By agreement with the owner the initiating municipality may, with the approval of the Board, acquire by purchase any existing telephone system operated in the municipality or any portion thereof, and also any part of such system situate in another municipality with the consent of the council of such other municipality, and failing such consent with the approval of the Board. 1918, c. 31, s. 24.

Purchase by municipality of existing system.

32. If in the establishment or extension of any system it is proposed to erect poles, cables or wires upon or along a highway, upon or along or adjacent to which are located the poles, cables or wires of a telephone company which is within the Legislative jurisdiction of Ontario, the initiating municipality before proceeding to erect such poles, cables or wires shall offer to purchase from the company at a fixed price its system or such part thereof as it is proposed to duplicate, or as the Board may determine should be purchased, and if the company does not accept the price so offered within one month from the date of the offer the Board shall fix a price to be offered, and the initiating municipality shall thereupon offer to purchase such system or part thereof at the price so fixed. 1918, c. 31, s. 25.

Offer to purchase system of company.

Right of municipality on refusal of company to accept price.

33. If the company does not within one month accept the offer of the price so fixed by the Board the initiating municipality may proceed to erect its poles, cables or wires upon or along such highway, or may expropriate such system or that part thereof which the Board pursuant to section 32 has determined should be purchased, as may be located within the limits of the initiating municipality or within the limits of any adjoining municipality into which the initiating municipality has authority to extend its system or lines, making such compensation therefor as may be agreed upon, or in case of failure to agree, as may be determined by arbitration under *The Municipal Act*. 1918, c. 31, s. 26; 1925, c. 58, s. 3.

Rev. Stat. c. 233.

Damages resulting from severance.

34. In fixing the price to be offered or the compensation to be made, where part only of a telephone system is proposed to be purchased or expropriated there shall be included in such price or compensation as the case may be, a sum sufficient to compensate the owner of such system for any damages directly resulting from severance. 1918, c. 31, s. 27.

Arbitration by Board where parties fail to agree.

35. When a municipality owning and operating or intending to own and operate a telephone system has taken proceedings under this Act to acquire a part of the telephone system of a municipality operating in such first named municipality or in an adjoining municipality and the parties are unable to agree upon the price to be paid for the same the Board shall have full power and authority to settle the terms and conditions of such acquisition including the price to be paid and all other matters proper to be taken into consideration and adjusted in the premises. 1921, c. 62, s. 5.

Powers of council to borrow money and to issue debentures.

36. Where the council of the initiating municipality acquires by purchase or expropriation an existing telephone system or part thereof, the powers vested by this Act in the council of the initiating municipality as to borrowing by way of temporary advances and in respect of the issue of debentures for the establishment or extension of a telephone system may be exercised by the council of the initiating municipality for the purpose of defraying the cost of such purchase. 1918, c. 31, s. 28.

Cost of Establishment, Extension and Maintenance.

Cost to be borne by subscribers.

37. The cost of the establishment of a system, and of any extension thereof, shall be defrayed by the subscribers thereto in equal proportions, or in such other proportions as may be fixed by the council of the initiating municipality, with the approval of the Board, and in case of default in payment by any subscriber of the amount so fixed, the same may be collected as an ordinary debt by action against the person liable therefor, or may be added to the collector's roll as taxes due from him, and may be collected in the same manner as other taxes. 1922, c. 70, s. 1, *part*.

38. Where the subscribers have prayed that debentures of the initiating municipality be issued to pay the cost of the work, the annual special rates assessed against the land of a subscriber shall be a charge upon the land designated by such subscriber in the petition for the establishment or extension of a system (and being land owned by such subscriber when he signed the petition), and shall, notwithstanding a change in the ownership of such land, continue to be a charge thereon until such rates have been fully paid, and such special rates may, as they become payable, be collected as an ordinary debt by action against the person liable therefor, or may be placed upon the collector's roll against the said land as taxes due from the owner of the same and may be collected in the same manner as other taxes; this section shall apply to all special rates heretofore and hereafter assessed against any lands under this Act. 1922, c. 70, s. 1, *part*.

39. Any subscriber where property is liable to be specially assessed to discharge debentures issued to meet the cost of such work may commute for a payment in cash the special rates assessable against his property forthwith after the actual cost of the work and the proportion of such cost payable by such subscriber have been ascertained. 1922, c. 70, s. 1, *part*.

40.—(1) The cost of maintenance of a system shall be defrayed by the subscribers in equal proportions or in such other proportions as may be fixed by the council of the municipality with the approval of the Board and shall be a charge on the lands of the several subscribers apportioned as above, and may be collected in the same manner and with the same remedies as the cost of the establishment or extension of a system or as any special rate assessed against the land of a subscriber in respect of such cost. 1922, c. 70, s. 1, *part*.

(2) Any tolls or moneys paid by the initiating municipality to any other system or company for telephone service furnished by such system or company to any subscriber of the initiating municipality may be collected by the initiating municipality from such subscriber in the same manner and by the same remedies as the cost of the maintenance of a system. 1924, c. 52, s. 12.

41. Where the period for which debentures have been issued for the establishment of a system or any extension of the same has expired, and the debentures and interest thereon have been fully paid, any subscriber who has fully paid all rates and charges payable by him in respect of the establishment and maintenance of such system or of such extension shall thereafter be released and discharged from all liability in respect of such system, except any liability which may arise under any further or other contract made by him for telephone service and except such subscriber's proportionate part of any debt due from the subscribers to the initiating municipality arising under section 42 of this Act. 1925, c. 58, s. 4.

Deficiency
in any year
how made
up.

42. If the amount collected from the subscribers, together with any other revenue derived from the operation of the system is insufficient in any year to meet the instalment of principal and interest falling due, and the cost of maintenance, the deficiency shall be paid out of the general funds of the initiating municipality, and the amount so paid shall constitute a debt due from the subscribers to the initiating municipality and may be collected in the same manner as any other debt due by the subscribers under this Act. 1918, c. 31, s. 30.

Equalizing
charges
against
subscribers.

43. If the share of the cost to each subscriber to any extension of a system is less than the share of the cost to each subscriber to the establishment of the original system, the initiating municipality may charge each subscriber to such extension the same annual amount, and for the like term of years, as was charged each subscriber to the establishment of the original system, and the difference between such last mentioned amount and the cost to each subscriber to such extension, shall be applied by the initiating municipality towards the cost of the maintenance of the system, including any extensions of the same. 1918, c. 31, s. 31.

Special
rate for
extensions.

44. If the share of the cost to each subscriber to any extension of a system is more than the share of the cost to each subscriber to the establishment of the original system, the initiating municipality may, with the approval of the Board, and subject to such conditions as the Board may prescribe, levy upon the property of each subscriber to such extension such annual special rate as in the opinion of the Board will be sufficient to discharge the debt incurred by reason of such extension, in equal annual instalments of principal and interest. 1918, c. 31, s. 32.

Validity of
rate.

45. In the event of a question arising as to the validity of any special rate levied under this Act, the same shall be determined by the Board, on an application to it for that purpose, and the determination of the Board shall be final and conclusive. 1918, c. 31, s. 33.

Terms and
rates for
non-sub-
scribers.

46. The initiating municipality may by by-law subject to the approval of the Board, prescribe the terms on which a person not being a subscriber may procure his premises to be connected with the system, and the rates at which he may receive telephone service and any such rate when overdue and unpaid may be collected in the same manner, and with the like remedies as a rate due and unpaid by a subscriber to the system. 1918, c. 31, s. 34.

Telephone Commissioners.

Council to
manage
system.

47. Until the subscribers of a telephone system petition or requisition the council of the initiating municipality as hereinafter provided, the system shall be under the control and management of the council. 1918, c. 31, s. 35.

48. Upon the petition of a majority of the subscribers or upon a requisition assented to by a two-thirds vote of the subscribers present at a general meeting duly called, the council of the initiating municipality shall place the system under the control and management of three commissioners to be designated "The Commissioners for the Telephone System of the Municipality of . . ."; a majority of whom may exercise all the powers of the commissioners. 1918, c. 31, s. 36.

Petition for management by commissioners.

49. The commissioners shall be elected each year at the annual general meeting of the subscribers, or at a general meeting called for the purpose, and the commissioners shall hold office until their successors are elected as provided herein. 1918, c. 31, s. 37.

Election of commissioners.

50. No person shall be eligible for election as a commissioner unless he is a subscriber to the system as herein defined. 1918, c. 31, s. 38.

Only a subscriber may be commissioner.

51. No person having himself or by or with or through another an interest, other than that of a subscriber, in any contract relating to the construction or maintenance of the system or in any contract for the supply of goods or materials to a contractor for work in connection with the system for which the initiating municipality or the commissioners are liable directly or indirectly to pay or who has an unpaid claim for such construction or maintenance, goods or materials, shall be eligible to be elected a commissioner or auditor, but the foregoing shall not render a commissioner ineligible to be appointed secretary or treasurer or secretary-treasurer of a telephone system at a salary to be fixed by the commissioners for such system. 1918, c. 31, s. 39; 1919, c. 43, s. 3.

Disqualification for office of commissioner and auditor.

52. Where a vacancy in the office of commissioner occurs from resignation, death or incapacity to act, the council of the initiating municipality shall, with the approval of the Board, immediately appoint a successor who shall hold office for the remainder of the term for which his predecessor was elected or appointed. 1918, c. 31, s. 40.

Filling vacancies in office of commissioner.

53. From and after the election of the commissioners for a system as herein provided, the control and management of the system shall be vested in the commissioners and all the provisions of this Act relative to the initiating municipality and the council thereof in respect of such system shall, except in so far as they or any of them are by this Act expressly excepted be applicable to the commissioners. 1918, c. 31, s. 41.

Powers of telephone commissioners.

54. The commissioners shall be paid such remuneration for their services as may be fixed by by-law passed as hereinafter prescribed. 1918, c. 31, s. 42.

Remuneration of commissioners.

Ownership
of system
and duties
of initiating
municipi-
pality.

55. Nothing herein contained shall affect the ownership of the system which shall remain vested in the initiating municipality nor the authority and duty of the initiating municipality and its several officials, upon the requisition of the commissioners to provide from time to time all moneys required for the establishment and maintenance of the system or any extension thereof, nor the right of the initiating municipality to levy and collect all moneys and rates which may be due and owing from time to time by the subscribers. 1918, c. 31, s. 43.

Security
to be given
by Secre-
tary, etc.

56. The commissioners may procure to be given by the secretary or other officer employed by them such security as they may require for the faithful performance of his duties by such secretary or other officer, and for the duly accounting for and paying over all moneys which may come into his possession or control. 1918, c. 31, s. 44.

By-laws.

57. The commissioners of a system may make by-laws not contrary to law or to this Act, to regulate :

- (a) the time and place at which the meetings of subscribers shall be held, the manner of calling such meetings and the procedure at the same;
- (b) the manner of election, duties and remuneration of the commissioners;
- (c) the control and management of the system;

but such by-laws shall be confirmed at a general meeting of the subscribers called for the purpose or at the next annual meeting of the subscribers. 1918, c. 31, s. 45.

Assumption
of control
of system
by council.

58. Upon a resolution adopted by a majority of all the subscribers of the system present at a special general meeting duly called, requiring the council of the initiating municipality to take over the control and management of the system, the council may, with the approval of the Board, pass a by-law for that purpose, and thereupon the commissioners, their officers, servants and agents shall hand over to the council or some official designated by it, all the property of the system of what kind soever and all moneys, vouchers, books, papers, documents and memoranda relating to the system in their possession, and thereafter the control and management of the system shall be vested in the initiating municipality and the council thereof. 1918, c. 31, s. 46; 1926, c. 51, s. 6.

Meetings of Subscribers.

Annual
meeting.

59. Every system established under this Part shall hold a general meeting of its subscribers in each year not later than the thirty-first day of January, or at such other time as may be prescribed by the Board. 1918, c. 31, s. 47.

60. Not less than ten days before the day fixed for holding the annual meeting a financial statement shall be sent by mail prepaid or delivered to each subscriber and to each member of the council of the initiating municipality containing:

Financial statement to be sent to subscribers.

- (a) a balance sheet showing in sufficient detail the assets and liabilities of the system as of 31st December last past;
- (b) an abstract of the income and expenditure of the system for the financial year ending on 31st December last past;
- (c) a copy of the report of the auditor or auditors for the year ending 31st December last past;
- (d) such other information respecting the system as the by-laws may require or the Board prescribe. 1918, c. 31, s. 48.

61. The financial statement in the last section mentioned shall be submitted to the subscribers at the annual general meeting. 1918, c. 31, s. 49.

Financial statement to be submitted to annual meeting.

62. In default of other express provision in the by-laws of the system, notice of the time and place for holding any general meeting of the subscribers shall be given at least ten days previously thereto by registered letter to each subscriber at his last known address. 1918, c. 31, s. 50.

Notice calling general meeting.

63. A notice of every general meeting of the subscribers shall be mailed prepaid or delivered to each member of the council of the initiating municipality. 1918, c. 31, s. 51.

Notice of meeting to be sent to members of council.

64. All notices calling a general meeting of the subscribers and the financial statements above mentioned shall be sent out by the commissioners or by their secretary or other officer, and where the system is under the control and management of the council, by the clerk of the initiating municipality. 1918, c. 31, s. 52.

By whom notice of meetings to be sent.

65. The notice calling any special general meeting shall state the business which is to be transacted at it. 1918, c. 31, s. 53.

Notice of special general meeting.

66. Upon receipt of a requisition in writing, signed by not less than one-tenth of the subscribers, setting forth the objects of the proposed meeting, the commissioners, by their secretary or other officer, or where the system is under the control and management of the council, the clerk of the initiating municipality, shall forthwith call a special general meeting of the subscribers for the transaction of the business mentioned in the requisition. 1918, c. 31, s. 54.

Special general meeting called on requisition.

Special
general
meeting
called by
subscribers.

67. If the meeting is not called and held within twenty-one days from the date upon which the requisition was handed or mailed prepaid to the chairman or secretary of the commissioners or to the clerk of the initiating municipality, as the case may be, one-tenth of the subscribers, whether they signed the requisition or not, may themselves by notice as herein provided call a special general meeting of the subscribers for the transaction of such business. 1918, c. 31, s. 55.

Special
general
meeting
called by
council, etc.

68. The commissioners or the council of the initiating municipality, as the case may be, may of their own motion call a special general meeting of the subscribers for the transaction of any business. 1918, c. 31, s. 56.

Who may
vote at
general
meetings.

69. No person shall be entitled to vote at any general meeting unless he is a subscriber to the system; provided that any member of the council of the initiating municipality may attend any general meeting and take part in the deliberations thereat, but may not vote. 1918, c. 31, s. 57.

Quorum,
proxies.

70. The presence in person or by proxy of at least fifty subscribers or of one-fourth of all the subscribers shall be necessary to constitute a quorum at general meetings, and the instrument appointing a proxy shall be in writing under the hand of the appointer, or if such appointer is a corporation, under its common seal, and shall be attested by at least one witness, and no person shall be appointed a proxy who is not a subscriber. 1921, c. 62, s. 6.

Duties and Remuneration of Municipal Officials.

Duties of
municipal
officials
of initiating
municipality.

71. When a telephone system is under the control and management of the initiating municipality the several officials of the municipality in their respective offices shall do and perform all acts, matters and things herein on their part respectively directed to be done and performed in respect of the system; and when the system is under the control and management of commissioners, the said officials respectively shall do and perform the said acts, matters and things in like manner unless relieved therefrom by the commissioners. 1918, c. 31, s. 58.

Duties of
municipal
officials in
initiating
and other munici-
palities.

72. Where a telephone system extends into a municipality other than the initiating municipality the clerk of the initiating municipality shall forthwith after its passing transmit to the clerk of such other municipality a certified copy of every debenture by-law charging with a rate the premises of any subscriber situate in such other municipality, and shall also in any year, when so required by the initiating municipality or the commissioners of the system, as the case may be, transmit to the clerk of such other municipality the amount payable by each such subscriber respectively, and the same

shall be placed on the collector's roll of such other municipality, and shall be collected in the same manner as municipal taxes, and paid over to the treasurer of the initiating municipality. 1918, c. 31, s. 59.

73. The initiating municipality, or the commissioners, as the case may be, shall pay to the clerk, treasurer and collector of such municipality respectively, and to the clerk, treasurer and collector respectively of any other municipality into which its system extends, a reasonable remuneration for services performed by them or any of them under this Act, and such remuneration shall be fixed by agreement between the official performing the service and the council of the municipality or the commissioners, as the case may be, and failing agreement, by the Board, on an application to it for that purpose. 1918, c. 31, s. 60.

Remuneration of clerk, treasurer, collector, etc.

74. The clerk, treasurer or collector of any municipality failing or neglecting to do and perform any act, matter or thing herein, or by any other act or by order of the Board directed to be done and performed by them respectively, shall incur a penalty of \$50 to be recovered and enforced by order of the Board, or under *The Summary Convictions Act*. 1918, c. 31, s. 61.

Penalties for breach of duty by municipal officials.
Rev. Stat. c. 121.

Books of Account.

75. The council of the initiating municipality or the commissioners, as the case may be, shall cause proper books of account to be kept containing full and true statements of:

Books of account to be kept.

- (a) the financial transactions in respect of the system;
- (b) the assets of the system;
- (c) the sums of money received and expended in respect of the system and the matters in respect of which such receipt and expenditure took place;
- (d) the credits and liabilities of the system;

and a book or books containing minutes of all the proceedings and votes at meetings of the council or of the commissioners and subscribers, respectively, verified by the signature of the reeve, chairman of the commissioners or other presiding officer, as the case may be. 1918, c. 31, s. 62.

Audit.

76. The accounts of the system shall be examined once at least in every year and the correctness of the balance sheet shall be ascertained by the auditor or auditors of the initiating municipality, and where the system is under the control and

Audit of accounts.

management of commissioners, by an auditor or auditors, who shall be elected at the annual or other general meeting of the subscribers. 1918, c. 31, s. 63.

Filling
vacancies
in office
of auditor.

77. The council of the initiating municipality or the commissioners, as the case may be, may fill any casual vacancy in the office of auditor, and any auditor shall be eligible for reappointment. 1918, c. 31, s. 64.

Remunera-
tion of
auditor.

78. The remuneration of the auditor or auditors shall be fixed by the subscribers in general meeting, except that the remuneration of any auditor or auditors appointed to fill any casual vacancy, may be fixed by the council of the initiating municipality, or by the commissioners, as the case may be. 1918, c. 31, s. 65.

Limitation of Actions.

Limitation.
of action
against
corporation.

79. No action shall be brought against a municipal corporation or any of its officers, agents or servants for anything done or omitted in the construction, operation or maintenance of a telephone system, or in the exercise of any of the powers under this Act after the lapse of six months from the time when the cause of action arose. 1918, c. 31, s. 66.

PART III.

GRANTS OF MUNICIPAL FRANCHISES.

Grants of
right to use
highways.

80. The council of a county, village or township, with the approval of the Board, and the council of any other municipality, with the assent of the municipal electors, may pass a by-law or by-laws for granting to a telephone company, upon such terms and conditions as may be deemed expedient, the right to use any of the highways, squares, or lanes under the jurisdiction of the council of such county, village, township or other municipality for placing in, upon, over or under the same, poles, cables, ducts and wires for the purpose of its business. 1918, c. 31, s. 67; 1919, c. 43, s. 4.

Exclusive
right to use
highways in
urban munici-
palities.

81. In the case of a city, town or village, the right in the next preceding section mentioned may be an exclusive right, limited to a period not exceeding five years at any one time. 1918, c. 31, s. 68.

Use of high-
way for pri-
vate telephone
line.

82. Notwithstanding a by-law passed under the previous section, a council may grant to any person permission to use any of the highways, squares or lanes of the municipality, for the purpose of a private telephone line for the use of such person, his servants, clerks, or agents, or persons communicating with him or them. 1918, c. 31, s. 69.

83. Subject to the provisions of the three preceding sections, whenever the council of a municipality and a company are unable to agree as to the terms and conditions upon which the right to use the highways, squares, or lanes in the municipality shall be granted, the council and the company may, by common consent, refer the matters in dispute to the Board, in which event the Board, after hearing the evidence of all persons interested, may prescribe such terms and conditions, and thereupon such terms and conditions shall be binding upon the corporation of the municipality and the company. 1918, c. 31, s. 70.

Board to determine differences as to use of highways.

84. In unincorporated territory the right to use for the foregoing purposes any highway or road allowance situated in a township without municipal organization may be granted by the Board. 1918, c. 31, s. 71.

Right to use highways in unorganized townships.

PART IV.

INCORPORATION OF COMPANIES.

85. Every unincorporated association or partnership of persons, comprising five or more members or partners, owning or proposing to own, a telephone system, and using or proposing to use a public highway or highways, for the purpose of furnishing telephone service to the members or partners of such unincorporated association or partnership, or any of them, or to other persons, shall procure to be issued to them letters patent under *The Companies Act*, creating them a corporation, with share capital, for the purpose of carrying on the business of a telephone company. 1918, c. 31, s. 72.

Partnerships and unincorporated associations to be incorporated.

Rev. Stat. c. 218.

86. Every member or partner of such association or partnership shall have allotted to him shares in the company so incorporated of equal value to his share or interest in the association or partnership at the date upon which the charter of incorporation is granted, and if any dispute arises as to the value of such share or interest, the same shall be determined by the Board. 1918, c. 31, s. 73.

Allotment of shares in company to members of partnership, etc.

87. In computing the value of the share or interest of any member or partner there shall be included, in addition to any money contributed by him for the purpose of such unincorporated association or partnership, the value of any poles, wires, or other equipment, including the cost of installation, contributed by him, and for which such member has not been reimbursed, and thereafter such poles, wires or other equipment, as the case may be, shall be the property of the company. 1918, c. 31, s. 74.

How value of partners to be computed.

By-laws to be approved by Board.

88. A company may pass by-laws regarding the control and management of its undertaking, its dealings with the public and for the use, protection and care of its property, but no such by-laws shall have any force or effect or be acted upon until approved by the Board. 1921, c. 62, s. 7, *part*.

Rev. Stat. c. 218, ss. 189, 190, 191 not to apply.

89. The provisions of sections 189, 190 and 191 of *The Companies Act* shall not be applicable to telephone systems established under this Act. 1921, c. 62, s. 7, *part*.

PART V.

ALL TELEPHONE SYSTEMS.

Equipment and Service.

Efficient service to be furnished.

90. Every company shall furnish a prompt and efficient service and for the purpose of ensuring the same the Board may prescribe standard conditions and specifications for the construction and equipment of all telephone systems and may make such orders for the maintenance thereof as the Board may from time to time determine to be expedient or necessary, but such standard conditions or specifications shall not apply to that part of the plant or equipment of a telephone system in course of construction, or existing and operated by any company prior to the 30th day of June, 1911, but the same shall apply to the renewal or replacement thereof whenever such renewal or replacement may, in the opinion of the Board, become necessary as a result of depreciation, or obsolescence. 1918, c. 31, s. 75.

Conditions and specifications.

91. In prescribing such conditions and specifications, the Board shall take into consideration only such standards as in general practice have been found necessary for the protection of life and property, and for the provision of an efficient service to the public, without regard to any particular type of equipment or apparatus. 1918, c. 31, s. 76.

Repairs to equipment operated but not owned by company.

92. Where the telephone or other equipment operated in connection with the system of a company is not the property of such company, the owner of such telephone or other equipment shall keep and maintain the same in proper working order, and so as not to impair the efficient operation of said system, and in case such owner fails to do so, the company by its servants or agents may at all reasonable times and upon reasonable notice given or request made enter in and upon the premises upon which such telephone or other equipment is situate for the purpose of inspecting and repairing, and where necessary may repair the same, and the company

may collect the cost of the repairs so made from the owner of such telephone or other equipment in like manner and with the like remedies as it may collect telephone rates. 1918, c. 31, s. 77.

93. No company shall erect poles upon or along or adjacent to and parallel with any portion of a highway upon or along which the pole leads of another company are already erected, unless by consent of the Board. 1918, c. 31, s. 78.

Duplication
of pole leads
on highways.

94. When in the opinion of the Board the convenience of persons desiring telephone service requires the extension of a system upon or along a highway, upon or along which there is already a telephone pole lead, the Board may make such order as it may deem expedient for authorizing such extension, and preventing the unnecessary multiplication of pole leads upon or along such highway, and such order shall not be subject to appeal or be open to review except by the Board. 1918, c. 31, s. 79.

Use of pole
leads by two
or more sys-
tems.

95. Notwithstanding anything in any Act contained, whenever any person makes application to a company for telephone service, the company shall furnish such telephone service upon terms to be agreed upon, and failing agreement, upon such terms and conditions as may be ordered by the Board, and no order made under this section shall be subject to appeal or to review except by the Board. 1918, c. 31, s. 80.

Telephone
service to be
furnished on
request.

96. Where it is necessary for the purpose of carrying into effect any order of the Board made under this Act that a company should erect poles, cables, ducts or wires upon or along any road or highway under the jurisdiction of a town, village, county or township municipality, such company may, notwithstanding any limitations in the letters patent incorporating it or otherwise, erect such poles, cables, ducts and wires upon or along such road or highway upon such terms and conditions as may be agreed upon between the council of the municipality and the company, and if the council and the company are unable to agree, then upon such terms and conditions as shall be prescribed by the Board. 1918, c. 31, s. 81.

Erection of
poles to enable
performance
of Board's
order.

Terms.

Connection of Telephone Systems.

97. A company may enter into an agreement with any other company or with a commission furnishing telephone service to the public, whether such latter company or commission is under the jurisdiction of the Legislature of the Province of Ontario or not, providing for the connection, intercommunication, joint operation or reciprocal use of the respective lines and systems controlled, owned or operated by such companies, or by such company or commission, as the case may be, and

Agreements
for
connection,
joint operation,
etc.

for the transmission of business between such systems, and for the interchange of telephone messages and service passing to, from or over their said lines and systems, and for the apportionment of tolls, commissions and expenditures, and the division of receipts and profits and generally for the regulation, management and operation of their said lines and systems respectively, as between themselves and otherwise; but no such agreement shall have any validity or effect until approved by the Board. 1918, c. 31, s. 82; 1924, c. 52, s. 13.

Board may order connection, joint operations, etc.

98. Whenever the telephone systems or lines of two or more companies are situate in such proximity to one another as to make it expedient in the public interest that they should be connected in order that there may be intercommunication between, or joint operation or reciprocal use of them, or that such systems or lines should be used jointly by such companies for the transmission of messages by or over the same, if either or any of such companies fail or refuse to enter into an agreement with the other or others, the Board shall order that such connection be made, and shall order by whom, and in what manner, any line or works necessary for the purpose of making such connection shall be constructed and maintained, and how the cost incurred in constructing and maintaining it or them shall be borne, and shall order that there shall be such intercommunication between, or joint operation or reciprocal use of, and such transmission of messages by or over such systems or lines, including any such connecting lines or works, upon such terms and conditions as the Board may prescribe, and such order shall not be subject to appeal or be open to review except by the Board. 1918, c. 31, s. 83.

Intercommunication by systems terminating on the switchboard of any company.

99.—(1) Where the lines of two or more telephone systems terminate upon the switchboard of a company, such company shall furnish all reasonable and proper facilities for the interchange of conversations between such telephone systems.

What facilities to be included.

(2) The facilities to be so afforded shall include the providing of suitable appliances and competent operators to connect the lines of such telephone systems, and the permitting of conversations to be transmitted without unreasonable delay over the lines so connected.

Terms.

(3) The terms upon which the facilities for the interchange of conversation between two or more telephone systems shall be afforded under this section shall be fixed by agreement between the companies interested, subject to the approval of the Board, and failing such agreement they shall be fixed by the Board. 1918, c. 31, s. 84.

Intercommunication between Dominion and Provincial companies.

100. Where the telephone system or lines of a company within the legislative jurisdiction of the Province of Ontario and the system or lines of a telephone company within the jurisdiction of the Parliament of Canada are situate in such

proximity to one another as to make it practicable for such systems or lines to be so connected as to provide direct communication whenever required, between any telephone on the one system or line and any telephone on the other system or line, either of such companies or any municipal corporation or other public body or any person interested may file with the secretary of the Board, and with the secretary of the Board of Railway Commissioners for Canada, an application for an order that such connection should be made together with evidence of service of such application upon the companies interested or affected, and the provisions of paragraphs *b, c, d* and *e* of subsection 1 of section 131 of *The Railway Act*,^{Rev. Stat. c. 224.} with the necessary adaptation, shall apply to every such application. 1918, c. 31, s. 85.

Sales and Agreements Increasing Cost of Service.

101. A company shall not enter into an agreement with any other company having authority to construct or operate a telephone system, or line, whether such authority is derived from the Legislature of the Province of Ontario or not, which may have the effect of increasing the cost of telephone service to the public or of restricting competition in the supply of such service until such agreement has been submitted to and approved by the Board as just and reasonable. 1918, c. 31, s. 86.

Agreements restricting competition, or increasing cost of service.

102. No company shall sell or transfer its system or a controlling interest in it to any person or company, or amalgamate with any company or system, or enter into an agreement which shall, in effect, transfer the ownership or control of the system of such first named company to any other company, whether such other company is within the jurisdiction of the Legislature of the Province of Ontario or not, until the Board has approved such sale, transfer, amalgamation or agreement. 1918, c. 31, s. 87.

Sales or transfers of systems, etc.

Tolls.

103. All tolls to be charged by any company and all special rates to be levied and collected by any municipal corporation under this Act, shall be subject to the approval of the Board and no company or corporation shall charge, levy or collect any toll or special rate in excess of those approved by the Board. 1918, c. 31, s. 88.

Tolls.

104. Every company shall file with the Board its tariff of tolls in such form as the Board may prescribe, and shall give such particulars as the Board by order or regulation may require, and no company shall charge any toll which has not been filed with and approved by the Board. 1918, c. 31, s. 89.

Tariffs to be filed.

Prohibition
against dis-
crimination
as to tolls.

105. There shall be no discrimination by any company in favour of or against any person, company or corporation furnished with telephone service by such first mentioned company either by way of reduction or increase in any toll as approved by the Board and no company shall without the approval of the Board furnish free telephone service to any person, company or corporation. 1924, c. 52, s. 14.

Penalty for
neglect to
comply with
certain
provisions.

106. If a company makes default in complying with the provisions of the three next preceding sections, or any of them, the company shall incur a penalty of \$25 for every such default, and every director, commissioner, manager, secretary or other officer of the company who wilfully authorizes or permits such default, shall incur the like penalty; every such penalty shall be recoverable under *The Summary Convictions Act*, or may be enforced by order of the Board. 1924, c. 52, s. 15.

Rev. Stat.,
c. 121.

Municipal
agreement
or by-law
fixing tolls.

107. Notwithstanding the provisions of any municipal agreement or by-law, a company may, with the approval of the Board, charge higher tolls than those prescribed in such municipal agreement or by-law. 1918, c. 31, s. 90.

Publication
of tolls.

108. The Board may, by regulation or otherwise, prescribe the manner and form in which any tariff of tolls shall be published or kept open for public inspection. 1918, c. 31, s. 91.

Depreciation Fund.

Maintenance
of depreciation
fund.

109. Every telephone company shall out of earnings provide and maintain a proper and adequate depreciation fund whenever the Board shall, after enquiry, determine that such depreciation fund is reasonably necessary, and the Board on such enquiry shall ascertain and determine what is the proper and adequate rate of depreciation of the property of each such company; and the Board may make such changes in such rate of depreciation from time to time as it may find expedient. 1918, c. 31, s. 92.

Deposit and
application
of fund.

110. The moneys carried to the credit of the depreciation fund shall, unless the Board otherwise directs, be deposited in a chartered bank at interest and may, with the approval of the Board, be expended in new constructions or extensions or additions to the property of the company, or with the like approval may be invested in interest-bearing securities; and all interest accruing from any portion of the depreciation fund so deposited or invested, and such portion of the earnings fixed by the Board as attributable to the moneys so expended in new constructions, extensions or additions, shall from time to time be carried to the credit of the said fund. 1918, c. 31, s. 93.

Issues of Stock, Bonds, Etc.

111. A company shall not issue stock, bonds, notes or other evidence of indebtedness payable at periods of more than twelve months after the date thereof, until it shall have obtained from the Board an order authorizing such issue and the amount thereof, and stating the purposes to which the issue or proceeds thereof are to be applied, and that in the opinion of the Board, the money, property or labour to be procured or paid for by the issue of such stock, bonds, notes or other evidence of indebtedness, is or has been reasonably required for the purposes specified in the order, and in case default is made by any company in complying with the requirements of this section every director, manager, secretary or other officer of the company who is knowingly a party to the default shall incur a penalty not exceeding \$50 for every such default, and such penalty shall be recoverable under *The Summary Convictions Act*, or may be enforced by order of the Board. 1918, c. 31, s. 94.

Approval by
Board of issue
of stock, bonds,
notes, etc.

Rev. Stat.
c. 121.

Offences and Penalties.

112.—(1) No person upon whose premises a telephone instrument, wiring or other equipment is installed shall use or interfere with or permit such telephone instrument, wiring or other equipment to be used or interfered with so as to injure or damage the same or so as to prevent the convenient use of the circuit to which such telephone instrument is connected for the transmission of telephone conversations or messages.

Prohibition
against
interference
with instru-
ments by in-
dividuals.

(2) Any person guilty of a breach of this section shall incur a penalty of \$25 for each offence, recoverable under *The Summary Convictions Act*. 1921, c. 62, s. 8.

Penalty.
Rev. Stat.
c. 121.

113. Every operator or other person in the employ of a telephone company who divulges the purport or substance of any telephone conversation, or message passing over the system or lines of such company, except when lawfully authorized or directed so to do, is guilty of an offence and shall, on summary conviction before a justice of the peace, be liable to a penalty not exceeding \$25 or to imprisonment not exceeding thirty days or to both penalty and imprisonment. 1918, c. 31, s. 96.

Employees
divulging
conversa-
tions.

114. Every person who, having acquired knowledge of any conversation or message passing over any telephone system or line not addressed to, or intended for, such person, divulges the purport or substance of such conversation or message except when lawfully authorized or directed so to do, is guilty of an offence and shall, on summary conviction before a justice of the peace, be liable to a penalty not ex-

Persons
other than
employees
divulging
conversations.

ceeding \$25, or to imprisonment for a term not exceeding thirty days or to both penalty and imprisonment. 1918, c. 31, s. 97.

Using obscene language over telephone system.

115. Any person who, when using a telephone instrument or conversing over a telephone system or line, whether such telephone instrument, system or line is owned by a company within the jurisdiction of the Legislature of Ontario or not, shall use indecent, obscene, blasphemous or grossly insulting language shall, upon conviction under the provisions of *The Summary Convictions Act*, incur a penalty not exceeding \$25, and in default shall be imprisoned for a period not exceeding thirty days. 1918, c. 31, s. 98.

Rev. Stat.
c. 121.

Receiving and Transmitting Weather Bulletins.

Companies to receive and communicate daily weather bulletin to subscribers.

116.—(1) It shall be the duty of every telephone company, its operators and agents, to whose central office the daily weather forecast bulletin issued by the Meteorological Bureau is delivered or transmitted, to receive the same and forthwith transcribe such bulletin legibly in writing or type on a form to be prescribed by the Board, and to file the same in said exchange, and to communicate, free of charge, the contents of such bulletin to any subscriber of such company requesting the same.

Transmission of bulletin to connecting company.

(2) The Board may by order or regulation direct any telephone company to whose central exchange the daily weather forecast bulletin is delivered or transmitted as aforesaid, to transmit the contents of the same to any connecting company whose operators and agents shall thereupon in like manner as in the previous subsection receive, transcribe and file the same, and communicate its contents free of charge to any subscriber of such last-mentioned company requesting the same. 1918, c. 31, s. 99.

Returns to the Board.

Furnishing returns, etc.

117. Every company shall, on or before the 31st day of January in each year, or at such other time as the Board may specify, furnish to the Board in such form as it shall prescribe such statements, reports and returns respecting the cost, receipts, expenditures, operation, management and equipment of such system as the Board may require. 1918, c. 31, s. 100.

Penalty for default in making returns.

118. If default is made in complying with the requirements of the foregoing section, every director, commissioner, manager, secretary or other officer of the company who is knowingly a party to the default, shall incur a penalty not exceeding \$50 for every day during which the default continues, and such penalty shall be recoverable under *The Summary Convictions Act*, or may be enforced by order of the Board. 1918, c. 31, s. 101.

Rev. Stat.
c. 121.

PART VI.

POWERS OF THE BOARD.

119. The Board shall superintend the carrying out of this Act and, for that purpose, shall have and may exercise all necessary powers and authority over and in respect of any person, company, municipal corporation or board of commissioners. 1918, c. 31, s. 102.

Supervisory jurisdiction of the Board.

120. The Board shall have exclusive jurisdiction to hear and determine any differences which may arise between two or more municipal corporations in respect of the establishment, extension, operation and maintenance of a telephone system or in respect of any act, matter or thing required to be done by them or any of them under this Act, and the determination of the Board upon the same shall be final and binding upon all parties. 1918, c. 31, s. 103.

Board's exclusive jurisdiction to determine disputes between municipalities.

121. The Board may, upon request and on such terms as seem expedient, assist by advice any company, municipal corporation, the commissioners for any system and resident assessed landowners as to the establishment, extension, maintenance and operation of any system or works authorized by this Act and the proceedings incidental thereto. 1918, c. 31, s. 104.

Board may advise companies, etc.

122. The Board may from time to time enquire whether any system established by a municipal corporation under this Act is being operated in such a way that the rates or tolls charged for the service furnished by such system are sufficient to pay the debenture debt and interest created and accruing in respect thereof together with the cost of maintenance, or whether greater rates are charged than are sufficient for such purposes, and the Board shall have authority to order such revision or readjustment of the said rates or tolls as it may deem expedient or necessary for the purposes herein defined. 1924, c. 52, s. 16.

Enquiry by Board as to whether rates sufficient to meet debt charges, etc.

123.—(1) The Board, whenever it appears to be expedient or necessary for the purpose of carrying into effect any of the provisions of this Act, may direct any person to examine and report upon the construction, operation or management of any telephone system, or upon any application, complaint or dispute before the Board or upon any matter or thing over which the Board has jurisdiction and for that purpose such person shall have authority at all reasonable hours to enter any building, office, or other premises belonging to or connected with any such system and to examine and check all books, accounts, tariffs, rates, balance-sheets and other papers, records and documents relating to

Examination of and report upon telephone system.

such system and to examine the switchboards, instruments, toll stations and all other property of whatsoever nature which belongs to or forms a part of such system. 1918, c. 31, s. 105 (1); 1921, c. 62, s. 9.

Powers of
examiner.
Rev. Stat.,
c. 225.

(2) The person appointed to make such enquiry and report shall have and may exercise all the powers set out in section 52 of *The Railway and Municipal Board Act*.

Adoption of
report by
Board.

(3) Upon receiving the report of such person appointed to make enquiry and report, the Board may adopt such report in whole or in part and may thereupon make an order upon and in respect of the subject matter of the same. 1918, c. 31, s. 105 (2, 3).

General
powers of
Board, prac-
tice and
procedure.

Rev. Stat.,
c. 225.

124. The provisions of *The Railway and Municipal Board Act*, with respect to the jurisdiction and powers of the Board, and as to practice and procedure, shall apply *mutatis mutandis* to the exercise of the jurisdiction conferred on the Board by this Act, and the decision of the Board on any question of fact shall be final. 1918, c. 31, s. 106.

Power of
Board to
hear com-
plaints.

125. The Board shall have jurisdiction to inquire into, hear and determine any application by or on behalf of any person interested,

Rev. Stat.
c. 224.

(a) complaining that any company has failed to do any act, matter or thing required to be done by the company under *The Railway Act*, this Act, any general or special Act, or by any regulation or order made thereunder by the Lieutenant-Governor in Council, the Board, or any other authority, or that any company has done or is doing anything contrary to or in violation of such Acts, or any of them, or any such regulation or order;

(b) complaining that any company is charging tolls in excess of those approved by the Board;

(c) requesting the Board to make any order, or give any direction, sanction or approval which by law it is authorized to make or give. 1918, c. 31, s. 107.

Powers of
Board exer-
ciseable on its
own motion.

126. The Board of its own motion may order any person, company or municipality to do forthwith or within any specified time, and in any manner prescribed by the Board, anything which such person, company or municipality is or may be required to do under the said Acts or regulations, or any of them, and may forbid the doing or continuing of anything which is contrary to the same or any of them. 1918, c. 31, s. 108.

127. The Board may approve of forms of by-laws, notices and other proceedings to be passed, given, or taken under and in carrying out the provisions of this Act, and every by-law, notice or other proceeding, which is in substantial conformity with the form so approved, shall not be open to objection on the ground that it is not in accordance with the provisions of this Act applicable thereto, but the use of such forms shall not be obligatory. 1918, c. 31, s. 109.

Board may approve of forms, etc.

128. The Board may prescribe the forms of accounts, books of accounts and records to be kept by companies subject to the provisions of this Act. 1918, c. 31, s. 110.

Forms of accounts may be prescribed.

129. The Board may make regulations for the enforcement and carrying into effect of this Act, and may prescribe penalties where not otherwise provided for the breach of any of the provisions of this Act or of the said regulations, but no penalty shall, in respect of any breach, exceed \$100, nor shall the imposition of any such penalty affect any other obligation or liability of a company. 1918, c. 31, s. 111.

The Board may make regulations.

130. Notwithstanding anything in any Act contained, whenever any company has failed to do any act, matter or thing required by *The Companies Act*, the Board may inquire into the causes and extent of such failure, and if, in the opinion of the Board, such failure has been due to inadvertence, error or mistake, the Board may order such company to do such acts, matters or things, as the Board may consider to be expedient or necessary in the premises, and, upon such company complying with such order, the Board may recommend to the Lieutenant-Governor in Council that supplementary letters patent, Order in Council, or certificate embodying such provisions as may be deemed expedient or necessary be issued to such company, and thereupon the Lieutenant-Governor in Council may issue such supplementary letters patent, Order in Council or certificate. 1918, c. 31, s. 112.

Breaches of *The Companies Act* cured.

Rev. Stat. c. 218.

131. After such supplementary letters patent, Order in Council, or certificate have or has been issued, such company shall be deemed to have performed *nunc pro tunc* such act, matter or thing required to be done by *The Companies Act* as fully and effectively as if such failure had not occurred, and all agreements, contracts and obligations made or entered into by or with the company shall be legal, valid and binding to the same extent as they would have been if such inadvertence, error or mistake had not been made. 1918, c. 31, s. 113.

Validation of acts of the company.

Rev. Stat. c. 218.

CHAPTER 228.

The Public Utilities Corporations Act.

1. In this Act,

"Public
Utility,"
meaning of.

"Public Utility" shall mean and include any water works, gas works, electric heat, light or power works, telegraph and telephone lines, railways however operated, street railways and works for the transmission of gas, oil, water or electrical power or energy, or any similar works supplying the general public with necessities or conveniences. R.S.O. 1914, c. 189, s. 2.

Forfeiture of
rights by com-
pany passing
out of
jurisdiction of
Province.

2.—(1) Where the undertaking of a company operating a public utility incorporated under a general or special Act of this Legislature has been, since the 19th day of February, 1907, or hereafter shall be declared by the Parliament of Canada to be a work for the general advantage of Canada, or absorbed by or amalgamated with or controlled or operated by any other company whose undertaking is or has been declared a work for the general advantage of Canada, or which is not subject to the legislative control of Ontario, the Lieutenant-Governor in Council may declare that all or any of the powers, rights, privileges and franchises conferred upon such first mentioned company by letters patent or by any general or special Act of this Legislature shall be forfeited and thereupon all such powers, rights, privileges and franchises so declared to be forfeited shall cease and determine; and every municipal by-law passed and every agreement entered into with any municipal corporation authorizing such company to carry on business or granting to it any right, privilege or franchise shall also thereupon become void and be of no effect, and such company shall forfeit all claim to any bonus or other aid granted by any municipal corporation or by this Legislature. R.S.O. 1914, c. 189, s. 3 (1), *part*.

Bonus de-
bentures not
affected.

(2) Nothing in this section shall affect the validity of any debenture issued by a municipal corporation for payment of any such bonus in the hands of a *bona fide* holder for valuable consideration, nor the claim of any *bona fide* creditor of such company. R.S.O. 1914, c. 189, s. 3 (2).

3.—(1) Notwithstanding anything in any Act contained a municipal corporation shall not hereafter enter into any agreement with any such company or pass any by-law in relation to any public utility which has been declared to be a work for the general advantage of Canada, or which is not within the legislative control of Ontario, until the Lieutenant-Governor in Council has approved of such agreement or by-law, and every agreement entered into and by-law passed in violation of this section shall be utterly void and of no effect.

Approval of
Lieut.-Gov.
in Council
required to
certain
agreements.

(2) The Lieutenant-Governor in Council may, from time to time, in advance of such agreements or by-laws approve of any class or description of such agreements or by-laws in regard to any corporation named in the Order in Council.
R.S.O. 1914, c. 189, s. 4.

CHAPTER 229.

The Minority Shareholders Rights Act.

Investigation into affairs where relations with another company cause unfairness to a shareholder.

1. Where upon the application of a shareholder in a company it is made to appear to a judge of the Supreme Court that

(a) the shareholder or the class of shareholders is being or has been unfairly dealt with by the majority of the shareholders, and

(b) such unfairness is shown to be due to the relations of the company to any other company the control of which is substantially in the hands of the same persons as that of the company in which the complaining person is a shareholder, the judge may direct an investigation to be made as directed by subsections 1 to 3 of section 129 of *The Companies Act*. 1914, c. 29, s. 1.

Rev. Stat. c. 218.

Power of judge of Supreme Court to make order for compensation or purchase of complainant's shares.

2. Upon the report of the inspector appointed under the said subsections the judge may order

(a) that the shareholder so complaining shall receive such compensation as the judge may determine for any loss sustained by him by reason of the matter complained of; or

(b) that the shares held by the shareholder complaining shall be purchased by the company at par value or at such price as will represent their actual value at the time when the matter complained of commenced or took place. 1914, c. 29, s. 2.

Rev. Stat. c. 111.

3. *The Judges' Orders Enforcement Act* shall apply to every order made under this Act. 1914, c. 29, s. 3.

Commencement of Act.

4. This Act shall come into force only after Proclamation of the Lieutenant-Governor in Council to be issued after like legislation has been enacted by the Parliament of Canada with respect to companies within its legislative jurisdiction. 1914, c. 29, s. 5.

CHAPTER 230.

The Guarantee Companies Securities Act.

1. In this Act,

Interpretation.

“Guarantee company” shall mean an incorporated company empowered to grant guarantees, bonds, policies, or contracts for the integrity and fidelity of employed persons, or in respect of any legal proceedings or for other like purposes approved by the Lieutenant-Governor in Council. R.S.O. 1914, c. 190, s. 2.

2. Where any judge, functionary, officer or person is entitled or required to take security by bond with sureties he may in lieu thereof take the bond, policy or guarantee contract of a guarantee company of the like nature and effect. R.S.O. 1914, c. 190, s. 3.

Bonds of guarantee company may be taken by officers and others.

3. Where any person is required to give security by bond with sureties he may in lieu thereof furnish the bond, policy or guarantee contract of a guarantee company of the like nature and effect. R.S.O. 1914, c. 190, s. 4.

Persons required to give security may give bond of guarantee company.

4. The guarantee company shall not be bound or required to justify. R.S.O. 1914, c. 190, s. 5.

Justification not required.

5. The bond, policy or guarantee contract of a guarantee company may be taken instead of or in substitution for any existing security if the judge, functionary, officer or person, mentioned in section 2 so directs. R.S.O. 1914, c. 190, s. 6.

Bond of company may be substituted for other bonds.

6. The interim receipt of a guarantee company may be accepted in lieu of a bond, policy or guarantee contract, but the latter shall be furnished within one month. R.S.O. 1914, c. 190, s. 7.

Interim receipt in lieu of bond.

7. Every Order in Council approving of a guarantee company shall immediately after the making thereof be published in the *Ontario Gazette*, and shall be laid forthwith before the Assembly if in session and if not then in session then within the first fifteen days of the next session thereof. R.S.O. 1914, c. 190, s. 8.

Publication of Order in Council and laying before Assembly.

CHAPTER 231.

The Cheese and Butter Exchanges Act.

1.—(1) Any five or more persons each of whom shall be,—

Incorporation of cheese and butter exchanges.

- (a) engaged in the manufacture and sale of cheese or butter, or a member of some firm or partnership carrying on the business of manufacturing cheese or butter, or a person appointed in writing to represent any person, firm or partnership or the patrons of a factory so engaged; or
- (b) a person elected or appointed by the shareholders of any cheese or butter manufacturing association or company; or
- (c) engaged in the business of buying cheese or butter for export or re-sale, or appointed in writing to represent any person, firm or corporation engaged in such business,

Certificate of Association.

who desire to associate themselves together for the purpose of carrying on a cheese and butter exchange may make, sign and acknowledge before a notary public, a commissioner for taking affidavits, or a justice of the peace, in duplicate, and file in the office of the registrar of the registry division in which such exchange is to be carried on a certificate in writing (Form 1), or to the same effect, together with the rules and regulations signed by such persons respectively.

Verifying signature to rules.

(2) The signatures to the rules shall be verified by the affidavit of the subscribing witness thereto made before a notary public, justice of the peace or commissioner authorized to take affidavits, or before the registrar or deputy-registrar.

Approval of rules by Minister.

(3) Before the filing of the certificate and rules they shall be approved by the Minister of Agriculture of Ontario in writing signed by him and endorsed thereon.

Corporate powers.

(4) Upon the filing of the certificate and rules, the persons signing such declaration and rules shall become a body corporate by the name described with the power to hold such land and other real and personal property as are required for the convenient management of the business of such exchange. R.S.O. 1914, c. 191, s. 2.

2.—(1) The registrar shall, if desired by the person filing the certificate, endorse on the other duplicate certificate and upon the duplicate of the rules, certificates of the other duplicates having been filed in his office with the date of filing, and every such certificate shall be *prima facie* evidence of the facts set out therein and of the incorporation of the exchange.

Endorsement
of registrar—
effect of as
evidence.

(2) The certificate so to be filed shall designate the place where the business of the exchange is to be carried on. R.S.O. 1914, c. 191, s. 3.

3. The fees to be charged by the registrar for filing any certificate shall be fifty cents, and for every search relating thereto ten cents. R.S.O. 1914, c. 191, s. 4.

Fees of
registrar.

4. The rules to be filed as hereinbefore mentioned shall contain regulations respecting,—

Rules, what
to be dealt
with.

(a) the mode of convening general and special meetings of the members of the exchange;

Meetings.

(b) provisions for the auditing of the accounts of the exchange;

Audit.

(c) the power and mode of withdrawal of members and the admission, suspension and expulsion of members;

Admission,
etc., of
members.

(d) the appointment of officers and their respective duties, including provisions for filling vacancies caused by death, resignation and other causes;

Officers.

(e) the mode of conducting the purchase and sale of cheese and butter at the exchange, and contracts for the purchase and sale thereof by members of the exchange;

Conduct of
business.

(f) the inspection, weighing and shipment of cheese and butter and the time and mode of payment for cheese or butter bought or sold on the exchange;

Inspection,
etc., of cheese
and butter.

(g) imposing penalties for the infraction of the rules of the exchange by members thereof;

Penalties for
infraction of
rules.

(h) the annual and other fees to be payable by members of the exchange; and

Fees of
members.

(i) the settlement by arbitration of disputes respecting contracts made on the said exchange. R.S.O. 1914, c. 191, s. 5.

Arbitrations.

5. The rules of every exchange registered under this Act shall bind the exchange and members thereof to the same extent as if each member had subscribed his name and affixed

Rules to bind
members.

his seal thereto, and all money payable by any member to the exchange in pursuance of any such rule shall be deemed to be a debt due from such member to the exchange and shall be recoverable by action. R.S.O. 1914, c. 191, s. 6.

Changes in rules not to take effect until approved by minister.

6. All rules made by the exchange may be repealed, altered or amended by other rules passed at any meeting of the members of the exchange specially called for that purpose, but no new rules shall have any force or effect until a copy, proved by the affidavit of the president or other head officer of the exchange to be a true copy of the rules passed by the members of the exchange at a meeting specially called for the purpose of considering the same, has been approved in writing endorsed thereon by the Minister of Agriculture and has been filed in the registry office in which the certificate of incorporation was filed. R.S.O. 1914, c. 191, s. 7.

Annual return to Minister of Agriculture.

7. The secretary, or other officer appointed for this purpose by any exchange incorporated under this Act, shall once in every year transmit to the Minister of Agriculture a list of the officers of such exchange and a statement of the business transacted by the exchange during the year in such form as the Minister may direct and on such schedules as he may provide. R.S.O. 1914, c. 191, s. 8.

FORM 1.

(Section 1.)

CERTIFICATE OF ASSOCIATION.

Province of Ontario, } We (insert names of subscribers not less
TO WIT: } than five) do hereby certify that we desire to
form an association pursuant to the provisions of *The Cheese and Butter Exchanges Act*.

The corporate name of the Exchange is to be (insert name of the Exchange),
and the name of the place (or places) where the operations of the said Exchange are to be carried on is (or are) (insert name of place or places where the operations of such Exchange are to be carried on).

Dated the

day of

(Signatures.)

On the day of A.D. 19 . before me personally appeared (insert names of subscribers to the certificate) to me known to be the individuals described in the foregoing certificate and they severally before me signed such certificate and acknowledged that they signed the same for the purposes therein mentioned.

A. B.,

Justice of the Peace, or
Commissioner for taking Affidavits, or Notary Public.

R.S.O. 1914, c. 191, Form 1.

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